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THE INTERNATIONAL PETROLEUM CARTEL, THE IRANIAN CONSORTIUM AND U.S. NATIONAL SECURITY

PREPARED FOR THE USE OF

SUBCOMMITTEE ON MULTINATIONAL CORPORATIONS

OF THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

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PREFACE BY SENATOR FRANK CHURCH

The Senate Foreign Relations Committee Subcommittee on Multinational Corporations has decided, with the consent of the Departments concerned, to make public certain hitherto secret documents from the files of the National Security Council, the Department of State and the Department of Justice. These documents explain and relate two conflicting policies of the United States Government in the field of international oil. These policies were 1) prosecution of the International Petroleum Cartel Case, and 2) creation of the Iranian Consortium. The first of these actions accused the five major American oil companies of illegally combining and contracting in the production, refining, transportation, and marketing of oil; the second encouraged the same companies to combine and contract in the first three of these areas. The decisions taken to resolve this conflict have shaped our national energy policy for the past twenty years.

On July 17, 1952, after several months of debate within the administration, the Attorney General announced that a grand jury investigation of the international oil industry would be undertaken. The investigation was based on a staff report of the Federal Trade Commission which had been completed that spring. From the outset the State Department opposed the initiation of this investigation. (See Acheson memo of April 16, 1952.) Nevertheless, subpoenas were issued in August against 21 large oil companies, and a request for the empanelling of a grand jury quickly followed.

Meanwhile, on the other side of the world, the Anglo-Iranian Oil Company (AIOC) was engaged in a bitter dispute with the Government of Iran. Since AIOC (now British Petroleum) was a British corporation the majority of whose stock was owned by the British Government, that government was naturally deeply involved in the dispute. In March 1951, Iran had nationalized all local assets of the company, which until that time had held exclusive concessionary rights over virtually all of Iran's oil producing areas as well as the Abadan refinery, the world's largest. American efforts to mediate the dispute had foundered on an irreconcilable difference between the parties as to whether a valid nationalization had taken place. There was growing concern in the State Department that Iran was going to slip within the Soviet orbit. Because of British and Iranian intransigence, Secretary of State Dean Acheson began considering the advisability of developing an American capability to deal with the Iranian problem. The most convenient method of accomplishing this objective would be to find some way of restoring Iranian oil production, even in the absence of AIOC. But, as Secretary Acheson later wrote, "an independent American solution over British opposition was also more easily said than done. Aside from the damaging ill will it would create between our two countries, it would require the cooperation of

the major American oil companies, who alone, aside from Anglo-Iranian, had the tankers to move the oil in the volume necessary." (Acheson, *Present at the Creation* (1969), p. 682.)

Whether an American solution indeed required the cooperation of the established major oil companies is an important historical question. The Justice Department believed that it did not. Because of the strong objections of the Antitrust Division to the plan proposed by State, an alternative plan was developed for consideration by the Attorney General. That proposal involved the participation of independent American oil companies which did not already have substantial interests in the Near East.

Although these conflicting policies were debated at the highest levels of government throughout the remainder of 1952, no decision was reached until January 1953, in the last days of the Truman Administration. By that time contact had been made with the American majors and they had expressed their reluctant willingness to take over some part of the old AIOC concession. In return for this cooperation, President Truman took the first step in limiting the Cartel Case. On January 12, 1953, he wrote a letter to Attorney General McGrannery ordering him to proceed against the oil companies by way of civil suit rather than grand jury investigations. This order was conditional, however, on the voluntary production by the companies of the documents sought by the Government through grand jury subpoenas.

Pursuant to the direction of the President, the Department of Justice terminated its grand jury investigation and filed a civil complaint on April 14, 1953, in the United States District Court for the District of Columbia. The complaint named five companies as co-defendants: Standard Oil of New Jersey (now Exxon), Socony-Vacuum Oil Company (now Mobil), Standard Oil Company of California (Socal), The Texas Company (now Texaco), and Gulf Oil Corporation (Gulf). It alleged violations of sections 1 and 2 of the Sherman Act during the period from 1928 to the date of filing. Some of the more specific allegations were monopolization of foreign production, division of foreign markets, fixing of prices worldwide, exclusion of competition, and monopolization of refinery patents. At the request of the defendants the case was transferred to the Southern District of New York, and the Government began the process of discovery.

In the meantime, however, the Eisenhower Administration had taken office. One of the new President's first actions was to appoint Herbert Hoover, Jr. as special representative to deal with the Iranian problem. Against the wishes of the Antitrust Division, Hoover proceeded on the assumption that the only solution to the Iranian problem lay in the utilization of the major oil companies as a vehicle for restoring Iranian petroleum production. On August 6, 1953, in National Security Council Action Memorandum No. 875b, the President designated the Attorney General to "develop a solution which would protect the interests of the free world in the Near East as a vital source of petroleum supplies," including development of "new or alternative legal relationship(s) between the oil companies of the Western nations and the nations of the Near East." The terms of reference under which the Attorney General was to solve this problem provided that, "It will be assumed that the enforcement of the Antitrust laws of the United States

against the Western oil companies operating in the Near East may be deemed secondary to the national security interest. . . ."

Then, in October 1953, overall authority to direct a solution was trnasferred from the Attorney General to the Secretary of State. Although the American majors still expressed little enthusiasm for entering Iran, they were encouraged by the downgrading of the Cartel Case to a civil action and stated that they would be willing to participate in achieving a solution because of the "large national security interests involved." (Letter from Harden, December 4, 1953.) Negotiations were begun in London at the instigation of the Chairman of AIOC between that company and the American majors. The Justice Department was not encouraged to play an active role in these negotiations, and the role of the Government itself was rather limited. For example, a Justice Department memorandum of December 10, 1953, suggests that the meetings ought to be called and supervised by Mr. Hoover, but wonders if proposing this might be considered a "presumptuous act."

On January 13, 1954, the broad outlines of the proposed Iranian Consortium agreement were discussed in the Justice Department. The objections of the Antitrust Division were noted, but the decision was out of their hands. The very next day the National Security Council decided that "the security interests of the United States require the United States petroleum companies to participate in an international consortium to contract with the Government of Iran, within the area of the former AIOC concession, for the production and refining of petroleum. . . ." Pursuant to this decision, on January 20, 1954, the Attorney General Rendered an opinion to the President that the proposed consortium plan, when viewed in connection with the security requirements of the United States as determined by the National Security Council, would not in itself constitute an unreasonable restraint of trade. These decisions were communicated to the companies and serious negotiations among them began over the structure and operation of the proposed Consortium.

The result of these negotiations was the Participants Agreement—published here for the first time. Clause 28 of that agreement details the operation of the Aggregate Programmed Quantity, or APQ. This provision permits companies with an aggregate of 31% or more of the equity in the Consortium to set crude production at any level they choose, so long as that level is *below* the desires of the rest of the Consortium members. This production-limiting device and other aspects of the Consortium arrangements convinced Leonard Emmerglick, the Antitrust Division attorney in charge of the Cartel Case, that the "plan goes beyond the premises upon which the Attorney General's opinion delivered to the National Security Council was based." (Memo of August 19, 1954.)

The Attorney General was once again asked to submit an opinion of non-violation to the National Security Council. Even though the proposed arrangements, in the view of the antitrust division, manifested "a continuation of the cartel pattern," the Attorney General "felt that he had already crossed this bridge on January 20," and approved the plan. Even more significantly, he "agreed that approval of the consortium was inconsistent with the cartel case as the complaint is

drawn and that necessarily the case must proceed with emphasis on the marketing aspects and not on the production control aspects." (Memo to Barnes, September 15, 1954.)

The result of this decision can be seen in a comparison of the complaint in the Cartel Case with the Statement of Claims. The Statement of Claims was prepared by the Antitrust Division in 1961 in preparation for the trial. This document, unlike the complaint, focuses entirely on the marketing aspects of the alleged cartel, with only slight and sparing mention of joint producing and refining arrangements. Although the trial never took place, Consent Decrees, which likewise deal primarily with marketing, were entered against Gulf, Exxon and Texaco. The case against Mobil and Socal was subsequently dismissed without prejudice.

The National Security Council's decision to place the major American oil companies in the Iranian Consortium effectively killed any chance of the Cartel Case being successfully prosecuted. But the Council in making this decision did so without statutory authority. The only way in which the executive branch may give antitrust immunity to private corporations is under the provisions of the Defense Production Act. (This was recognized by President Truman in his memorandum to Secretary Acheson on November 26, 1952.) Two years later, on September 15, 1954, Leonard Emmerglick wrote: "It seems to me that the Attorney General would have to stultify himself to give an opinion that these agreements would be lawful." By requiring this stultification the National Security Council not only perverted the law, but precluded the creation of a competitive international oil industry.

As one peruses these documents, the reader will note a glaring omission: nowhere is there any reference to consultation with the United States Congress. The decisions reflected in this record were taken in secrecy, debated in secrecy, and never exposed to public debate and inquiry. Yet, these decisions helped seal the basic structure of international oil for 25 years. Today we are living with the consequences of the breakdown of this structure. As we struggle to evolve a new structure, we must ensure that spurious claims of national security are not again used to shut off public inquiry and debate on this vital subject.

FRANK CHURCH,
U.S. Senator.

EXCHANGE OF LETTERS RELATING TO DECLASSIFICATION OF DOCUMENTS

JANUARY 11, 1974.

Hon. WILLIAM B. SAXBE,
Attorney General of the United States,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: The Subcommittee on Multinational Corporations of the Senate Foreign Relations Committee is engaged in a detailed investigation of the international oil industry and its impact on American foreign policy.

As Chairman of that Subcommittee, and pursuant to Executive Order 11652, I am requesting declassification of certain documents originating in your Department. Copies of these documents are enclosed.

Nothing has troubled me more deeply in recent years than the increasing distrust which has infected the attitude of many Americans toward their government. This distrust has no single cause, but certainly the extent to which government decisions affecting all of us have been taken in secret and kept secret from the American people has contributed to it greatly.

The documents which I am requesting be declassified throw light on some of the most important decisions of the post-war era—decisions which shaped our national energy policy for 20 years and which affect our lives even today. Perhaps their classification served some useful purpose at the time it was done, but 20 years later it serves no purpose except to promote this distrust.

Bringing these documents into the light of day may or may not prove that wisdom of the decisions which they reflect; but it will certainly go a long way toward creating a climate in which future decisions can be taken openly and with the full assent of the American people.

I hope you will be able to respond expeditiously to this request. Thank you for your cooperation.

Sincerely,

FRANK CHURCH,
Chairman, Subcommittee on
Multinational Corporations.

JANUARY 11, 1974.

Hon. HENRY A. KISSINGER,
Secretary of State,
The White House,
Washington, D.C.

DEAR MR. SECRETARY: The Subcommittee on Multinational Corporations of the Senate Foreign Relations Committee is engaged in a detailed investigation of the international oil industry and its impact on American foreign policy.

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I hope you will be able to respond expeditiously to this request
Thank you for your cooperation.

Sincerely,

FRANK CHURCH,
Chairman, Subcommittee on Multinational Corporations.

FEBRUARY 11, 1974.

Hon. FRANK CHURCH,
Chairman, Subcommittee on Multinational Corporations, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Attorney General Saxbe asked that I respond to your letter of January 11, 1974, requesting declassification of 32 documents, all of which bear dates during the period 1952 through 1954, from this Department's files. Upon receiving your request, this Department requested the Department of State to review the documents listed in the attachment to your letter. On February 7, 1974, the Department of State advised this Department that it could perceive "no objection on foreign policy grounds to declassification of those documents."

Accordingly this is to inform you that the Department of Justice will proceed to declassify documents listed in the attachment to your letter of January 11, 1974. I will write to you as soon as the documents are actually declassified. That process is going on now. It should be completed very soon.

I should note, however, that two of the documents submitted to the Attorney General for declassification—letters from Walter B. Smith to Mr. Orville Harden and Mr. R. G. Follis (with enclosure), dated December 8, 1953, and January 28, 1954, respectively—were originated by the Department of State and thus may be declassified only by that Department. State has advised me that it would discuss declassification of these two letters directly with you. Thus, this Department will not declassify those letters at this time.

I hope that declassification of these documents proves helpful to your Subcommittee.

Sincerely,

THOMAS E. KAUPER,
Assistant Attorney General,
Antitrust Division.

FEBRUARY 19, 1974.

Hon. HENRY A. KISSINGER,
Department of State,
Washington, D.C.

DEAR MR. SECRETARY: Thank you for your letter of February 13, 1974 responding to the requests I made on behalf of the Subcommittee on Multinational Corporations for document declassification.

Your prompt action in declassifying the State Department and National Security Council documents will be of great assistance to the Subcommittee as it attempts to provide the American people with a comprehensive study of the historical background of the energy crisis.

Unfortunately many Americans have in recent months come to view government secrecy as an effort to cover up government misdeeds. Your willingness to declassify these documents will go a long way to dispelling that suspicion.

Thank you again for your cooperation.

Sincerely,

FRANK CHURCH,
Chairman, Subcommittee on
Multinational Corporations.

THE INTERNATIONAL PETROLEUM CARTEL, THE IRANIAN CONSORTIUM AND U.S. NATIONAL SECURITY

STATEMENT DELIVERED TO MR. MORISON BY PERSONAL REPRESENTATIVE OF SECRETARY OF STATE DEAN ACHESON RE: MR. MORISON'S REQUEST TO ACHESON FOR HIS VIEWS AFTER READING THE MEMO ON WORLD OIL CARTEL: APRIL 16, 1952

It is not appropriate for the Department of State to interfere in any way with the execution of the anti-trust laws of the United States. The execution of these laws is the responsibility of the Department of Justice and the Federal Trade Commission. It is the responsibility of the Department of State to bring to the attention of these agencies the effect of any proposed action upon the foreign relations of the United States. These agencies can thus have all the aspects of the national interest before them at the time they make the decisions required of them by the anti-trust laws of the United States.

In the view of the Department of State the institution of these proceedings will not help the achievement of the foreign-policy aims of the United States in the Middle East and has the possibility of seriously impairing their attainment.

From the memorandum supplied by the Department of Justice it is observed that one aspect of the alleged conspiracy involves control of the major oil-producing areas in the world, particularly in the Middle East.

This will inevitably be interpreted by the peoples of the region as a statement that, were it not for such conspiracy, they would be getting a higher return from their oil resources. This will, of course, strengthen the movement for renegotiation of the present concession agreements and may give encouragement to those groups urging nationalization. Since the issues are not only economic but also political, the net effect will probably be to cause a decrease in political stability in the region. It would also appear to be likely that the time required for an adjudication of the issue by the courts will be such that the effect will be the same regardless of what the courts ultimately decide.

At the present time, the political instability in the Middle East has created a situation unfavorable to the investment of new capital in that area. For that reason it is unlikely that the proposed action would have the effect of bringing new American enterprises into the Middle East to aid in the development of the oil resources of the area.

The Department of State makes these considerations available to the Department of Justice in order that the Department of Justice may be fully advised of all the implications of the proposed action when it makes its decision as to what action it is going to take. The Depart- of State has not undertaken to discuss this matter with any other Department of the Government and cannot undertake any responsibility for what the views of other Departments might be.

Memorandum for the Attorney General, June 24, 1952

Re Request for grand jury authorization to investigate international oil cartel.

Investigations conducted by the Department of Justice, the Federal Trade Commission, the United States Senate's Special Committee Investigating the National Defense Program and the Swedish Oil Administration have revealed the existence of a series of agreements among the seven largest oil companies in the world to divide markets, to distribute on a quota basis, to fix prices and to control the production of oil throughout the world. These agreements are in violation of the antitrust laws of the United States.

The seven principal international oil companies are Standard Oil Company (New Jersey), Standard Oil Company of California, The Texas Company, Socony-Vacuum Oil Company, Inc., Gulf Oil Corporation, Royal Dutch Shell Group and Anglo-Iranian Oil Company.

The facts subsequently set forth in this memorandum disclose that these companies have been engaged in arrangements, agreements and understandings which have been designed to, and which in fact have restrained and monopolized foreign trade in crude oil and petroleum products, including the import and export trade of the United States.

1. World oil resources and their control

The seven principal international oil companies directly control 66.75% of the oil reserves of the world, which amount to approximately 78 billion barrels. Six of the seven companies control 33.6% of the reserves of the United States, which are estimated at 28 billion barrels. Throughout the world 9.5 million barrels of crude oil are produced per day, of which the United States produces 56.73%. The seven international companies produce about 50% of the world production. In such countries as Venezuela, Colombia, Peru, Kuwait, Saudi Arabia, Iran, Bahrein, Burma, and Borneo one or more of the seven companies produce 100% of the oil. In 1950 six of the seven companies produced 36% of the crude oil in the United States.

As late as 1946 five of the international companies obtained 58% of their crude oil in the United States and 42% abroad. However, in 1950 the same companies reduced their domestic production to 42% of their requirements and obtained 58% abroad. While exports of oil from the United States are continuously reducing, imports have increased to nearly one million barrels per day, which reflects the increasing dependence of this country on foreign production. In 1925 the average posted price for a barrel of crude oil at the well in the United States averaged $1.68; this average declined to 67¢ in 1933; leveled off at $1.00 per barrel in 1934; and in 1948 the average price increased to $2.60 and has remained at that figure to the present day. The American Gulf Coast price for a barrel of crude oil today averages $3. The average

price is arrived at by adding to the well price the cost of transportation by pipeline to the terminals on the Gulf Coast. The American Gulf Coast price has become an inflexible world base price.

2. HOW WORLD CONTROL WAS ACHIEVED

Agreements among the dominant oil companies of the world were entered into as early as 1928 and as late as November, 1948. The continuing vigor of the agreements is indicated by the fact that an official observer at the World Petroleum Congress, in a special report entitled *The Third World Petroleum Congress* filed with the Select Committees on Small Business, United States Senate and United States House of Representatives, on December 29, 1951, found that the same companies were carrying out their illegal programs at the present time by supplying the increasing world demand on the basis of the allocation of world markets to areas of production controlled by the seven companies.

Thus, the increase in United States consumption is to be supplied by Caribbean and Canadian production rather than through an increase of domestic production. The European and Asian demand is to be supplied by the Middle East. Since United States Gulf Coast prices quoted and paid for crude oil and petroleum products are adopted by the conspirators as the basis for world prices, the curtailment of domestic production serves to keep prices high throughout the world.

The "Achnacarry Agreement" of 1928

Standard and Shell were for many years and still are the two dominant concerns in international petroleum trade, each being fully integrated through subsidiaries in all branches of the petroleum industry in practically every country of the world. During the 1920's, the two companies expanded rapidly, each acquiring important producing properties and establishing many new sales outlets. As a result, they found themselves competing vigorously throughout the world, often cutting their prices to secure or retain accounts.

During this early period, Anglo-Persian Oil Company (now Anglo-Iranian), in which Shell owned a minor interest, began developing its concession in Persia and looking for new markets for its production. Walter Teagle of Standard and Sir Henri Deterding, managing director of Shell, made numerous visits to England and the United States, in the interest of concluding a cooperative working arrangement among the three competitors.

Finally, in September 1928, the three companies entered into the "Achnacarry Agreement" to eliminate competition among themselves, to prevent overproduction, to divide world markets on an "as is" basis, and to use common management associations, with penalties to be assessed for violation of assigned quotas. In working out this agreement, they selected the year 1928 as the base period for measuring the relative business positions of the companies in the various world markets. Because of Standard's fear of the American antitrust laws, the parties purposely refrained from signing the final agreement.

The "Red Line Agreement" of 1928—and Other Implementing Agreements

The "Achnacarry Agreement" was implemented by the "Red Line Agreement", negotiated at approximately the same time; the tem-

porary use of an Export Petroleum Association under the Webb-Pomerene Act; the "Memorandum for European Markets of 1930"; the "Draft Memorandum of Principles of 1934"; and numerous local agreements. All of these documents, when taken together as a whole, formed a rigid code of rules for the control of world oil at high prices by a few corporations. When competition from outside the group was experienced, the invading company was either destroyed or taken in as a party for a small quota of the total business in a limited area.

The "Red Line Agreement" of 1928 was entered into for the purpose of controlling all of the crude oil reserves in what was then Asia Minor and Arabia. Standard, Anglo-Iranian and Shell took in Socony-Vacuum Oil Company, C. S. Gulbenkian, and a French company which had acquired a small concession by reason of the San Remo Treaty.

In 1928, Standard Oil Company submitted to the Federal Trade Commission a plan for the Export Petroleum Association, Inc. to engage solely in export trade under the provisions of the Webb-Pomerene Export Trade Act. The stock of this Association was held by 15 American oil companies, including the Shell group. Practically the first action of the Export Association was the adoption of the basing point pricing system of the "Achnacarry Agreement". After investigation by the Federal Trade Commission, the Association collapsed because it was found that it was operating in violation of the Webb-Pomerene Export Trade Act. The Association frankly admitted in its correspondence with the Commission that the "as is" positions of its principal members were to be maintained by all members. "As is" positions were defined by the Association to mean "the ratios established by the 1928 performance."

The "Memorandum for European Markets of 1930" followed the collapse of the Export Association and the importation into the United States by Shell of large quantities of low cost oil from Venezuela. This document, negotiated by the same three international companies, established quotas for marketing, and local price-fixing arrangements.

"Draft Memorandum of Principles 1934" ("*DMOP*")

The activities of Shell and Standard became so far flung that finally it became necessary to promulgate the "Draft Memorandum of Principles of 1934" for the guidance of the local representatives of the parties to the "Achnacarry Agreement." All of the arrangements were stipulated to be of indefinite duration unless terminated by one month's notice. Each participant, including outside concerns, was to be allotted a percentage quota of the total consumption for each petroleum product for every country or area during a 12-month period. The 1928 volume of business, adjusted for future increases in consumption, was adopted as the "as is" basis. Each participant placed a representative on the "London Committee" charged with interpreting rules and settling disputes.

Local meetings to be attended by the managing directors of the operating subsidiaries were to be held once a month. At these meetings, each participant was to present its invoiced deliveries. Outsiders' deliveries were to be estimated. Then the total consumption was to be estimated and the percentage of each participant in the total trade

agreed upon. Each participant was bound to maintain his allotted position in the market and to avoid over and under-trading in relation to other participants, but over-trading in relation to outsiders was encouraged.

After arriving at the basic agreement, Standard established in England a group of executives known as the "London Counsel" (later incorporated under the name International Association for Petroleum Industry, Ltd.), to be constantly available for conferences and negotiations with Shell. This arrangement was made in an effort to remove the management of Standard's foreign marketing from the jurisdiction of the United States antitrust laws. At the present time the principal office of Standard in New York continues to make all important decisions and the London office serves merely in a liaison capacity.

In order for the American participants in the "Achnacarry Agreement" to carry out their obligations without too many of the American concerns becoming signatory parties to the Agreement, joint ventures were created among the American companies. For instance, Standard Oil (New Jersey) and Standard Oil Company of New York organized Standard-Vacuum Oil Company to conduct integrated operations in the Far East.

The same companies organized International Aviation Associates in 1936, later known as "Intava", for the purpose of jointly distributing aviation products in foreign countries. The arrangement provided, among other things, that the two companies should sell their products under a common name and in fixed relative amounts, that the distributive facilities of both concerns should be utilized, and that the profits resulting therefrom should be divided according to certain agreed-upon percentages for each product sold. The arrangement was integrated with the "DMOP' 'of 1934. Much of the aviation gasoline and all of the aviation lubricants and special products sold through "Intava" have been exported from the United States.

Sharing the market with other companies

In certain parts of the Western Hemisphere, Standard and Shell, in carrying out the "DMOP" had to share the market with other American companies. For instance, as early as 1930 the two companies found The Texas Company and The Atlantic Refining Company doing business in Brazil. Pursuant to the "DMOP" principles, Texas and Atlantic were allowed to participate, and sales quotas were fixed for all four companies, such quotas applying both to those petroleum products shipped from the United States and to those shipped from foreign points.

In El Salvador, Standard and Shell had originally divided the total business between themselves, but on January 1, 1938, Shell agreed to withdraw from Central America in return for Standard's temporary withdrawal from Venezuela. Standard thereupon took The Texas Company and Standard of California as participants in the local cartel. In the Dominican Republic the cartel was originally composed of Shell, Standard, Texas and Trinidad Leaseholders, Ltd., who established quotas, allocated customers and fixed the exact prices at which customers could be supplied. The Sinclair Refining Company invaded the Dominican Republic and for a short period a concerted

effort was made to drive Sinclair out of the market. Upon failure of this effort, the parties persuaded Sinclair to become a member of the cartel and assigned to it a "DMOP" quota.

Operations under the "Red Line" agreement

In 1933 Standard Oil Company of California obtained a petroleum concession in Saudi Arabia which is located wholly within the territory embraced in the "Red Line Agreement". A short time later the concession was transferred to Arabian American Oil Company (Aramco), of which Standard of California and The Texas Company became joint owners. Aramco developed a reserve estimated at nine billion barrels and built a refinery on the Persian Gulf. With low cost of production, these operations became extremely profitable.

At the same time, the two owners of Aramco were upsetting, to a certain extent, the "Achnacarry" and "DMOP" principles. On the excuse that Aramco's owners were "unable to finance" a pipeline to the Mediterranean, Standard Oil Company (New Jersey) and Socony-Vacuum Oil Company, Inc. were admitted to partnership in Aramco. Standard bought 30% of Aramco stock and Socony 10% and both agreed to guarantee loans totalling $273,000,000, made from a group of American banks. They also became parties with The Texas Company and Standard of California to a series of joint contracts for the purchase of oil from Aramco for a period of 18 years, in proportion to their stock holdings (i.e., the ratio 3:3:3:1). This provided for the transfer of effective control of Aramco to the two American companies, Jersey and Socony, which were the American partners in the Iraq Petroleum Company deal under the "Red Line Agreement".

In November 1948 a new "Red Line" agreement was negotiated. It merely reaffirmed the old arrangement with the exception of allowing Gulbenkian certain additional rights in settlement of his claim that the taking of the concession by Aramco in Saudi Arabia amounted to a breach of the original 1928 agreement. Throughout World War II the basic principles contained in the various agreements were maintained, except as the necessities of war forced readjustments.

Following the 1947–1948 agreements, the international companies began entering into contracts with one another for the purchase and sale of oil between themselves to even up the control of various oil producing areas among the participants.

Gulf Oil Corporation, which was not a party to the "Red Line" or Aramco arrangements, entered into an agreement with Shell in May 1947 by which Gulf would sell to Shell over a 12-year period increasingly large quantities of oil produced in Kuwait, outside the "Red Line" area, in which Gulf had a partnership with the Anglo-Iranian Oil Company. Gulf did not have a position in the European and African markets. Shell needed Gulf's oil to preserve its "as is" position in those markets.

Following Gulf's contract with Shell, Anglo-Iranian in turn made a series of agreements with both Standard Oil Company (New Jersey) and Socony-Vacuum in September 1947 and March 1948 to sell to the latter two companies, over a 20-year period, large quantities of Iranian production (amounting to over one billion barrels) at a "cost plus" price, the "plus" being fixed at a definite percentage of profit through-

out the 20-year period. The contract between Standard and Anglo-Iranian provided that Standard could not distribute any of this purchased oil east of the Suez. In March 1948 an agreement between Anglo-Iranian and Socony, covering 300,000,000 barrels of oil over a 20-year period, stipulated that purchases under this particular agreement would be imported into the United States.

3. THE WORLD CARTEL IN ACTION

Marketing

Information has been received by the Department to the effect that the marketing quotas and the prices for the various foreign countries are determined by representatives of the American participants and Shell who meet in New York City four times yearly. We also are informed that a group of oil company representatives known only by the initials "G.A.C." began operations in New York City on approximately March 31, 1950. This group is described as a private purchasing agency which purchases petroleum products in the United States to fill the orders of the cartel members for shipment to Europe.

Following the expulsion of Anglo-Iranian Oil Company from Iran, Asiatic Petroleum Company, Ltd. (a Shell subsidiary) has been purchasing large quantities of petroleum products in the United States to fill the orders of Anglo-Iranian and Shell for shipment to the Eastern Hemisphere. It is understood that this organization has the cooperation of the American companies who are parties to the "DMOP" arrangement in finding supplies in the United States to fill such orders.

Many of the presently existing "spot shortages" of petroleum products in this country are alleged to be due to the purchasing activities of both "G.A.C." and Asiatic. The result, whatever the purpose, is to sustain the "spot market" at the highest prices in history.

Refining

The basic arrangements entered into under the "Achnacarry Agreement" appear to extend into the refining branch of the industry, as well as production and marketing. In the catalytic refining and the coal hydrogenation processes fields, Standard, in dealing with I. G. Farben as early as 1928, took in Shell and Anglo-Iranian as partners in developing and licensing the processes throughout the world.

Shell became a 50% partner in International Hydro Patents Company and shared with Standard the right to license the process, but "it was agreed that licenses should not be issued to an extent or in a manner to disturb the existing marketing position of the respective companies." Provision was also made for the inclusion, in the future, of Anglo-Iranian upon a basis proportionate to its existing marketing position. In 1938, the IHP Company Agreement was extended to include the hydrocarbon synthesis field for the world, outside the United States and Canada, and Standard and Shell again obtained complete control throughout the world, outside of Germany, of all important processes for the synthetic production of petroleum products.

Patents

In 1938 and 1939, Standard and Shell negotiated with the principal American oil companies the Catalytic Agreement (generally called CRA), which became effective in September 1939. Under the terms

of this agreement, Standard Oil (New Jersey), The Texas Company, Standard Oil (Indiana), Shell Development Company, Universal Oil Products Company, and M. W. Kellogg Company formed a pool of patents covering the fluid catalytic cracking process. Anglo-Iranian Oil Company was designated as a "cooperative" party to the agreement.

It was the purpose of this pool to gather together all patents, inventions and "know-how" relating to catalytic refining processes and license the use of the same throughout the world on terms and conditions which were plainly in violation of the antitrust laws. The correspondence and memoranda found in Standard's files indicated that licenses granted outside of the United States were to be only to those companies who either already enjoyed as "as is" position under the "DMOP" arrangements or who would agree to sell most of their production under such licenses to participants in the "DMOP" arrangement.

On March 25, 1942, a criminal information was filed by the Department of Justice against the Standard Oil Company, its subsidiaries and certain of its officers, alleging Sherman Act violations in the execution of and operations under the various agreements. The defendants entered pleas of *nolo contendere* and paid substantial fines. On the same date a consent decree was entered to a complaint outlawing the CRA and hydrogenation arrangements. Immediately thereafter, the Petroleum Administration for War found it necessary to *recreate* the CRA arrangement in order to obtain aviation gasoline to prosecute the war. Between August 7, 1942 and October 15, 1945 this agreement had immunity from the antitrust laws under Public Law 603. Since that date, numerous attempts have been made by this Department to liberalize and make the agreement ineffective but this has been difficult, particularly for the reason that patent rights granted under the agreement run for the life of the patents.

Effect of cartel on prosecution of World War II

In 1944, the United States Navy attempted to buy petroleum products on the Persian Gulf for fueling the American fleet. Aramco offered to supply the Navy, for delivery in Navy tankers at the Persian Gulf, petroleum products *on the basis of the United States Gulf Coast price.* Navy procurement officers attempted to negotiate a price on the basis of lower Aramco costs but were unable to get Aramco to agree. Finally, on September 15, 1945, at a time when petroleum products were in critically short supply, a contract was entered into with Aramco to purchase motor fuel, Navy fuel oil and Diesel oil *at the minimum U.S. Gulf Coast prices for products of similar grades in tanker lots.* Prior to this date, other American companies had sold to the Navy at lower prices on a negotiated basis.

The pricing arrangements entered into between the companies operating in the Middle East removed any competitive effort. These privately negotiated purchases by the Navy resulted in the exaction of high prices without any relationship whatever to the low cost of producing oil in the Middle East area. While the United States was being charged $1.05 per barrel, sales were being made by Aramco to both

affiliated companies and to the Japanese at 70¢ and 84¢ per barrel. The Special Senate Committee Investigating the National Defense Program, in its report entitled "*Navy Purchases of Middle East Oil*" (1948), found that, between January 1942 and June 1947, the subsidiaries of Standard Oil Company of California and The Texas Company sold $70,000,000 worth of petroleum products to the United States Navy, which total price was about 38½ million dollars higher than prices charged to other purchasers.

The Federal Trade Commission has collected information to show that, while these prices were being charged to the Navy, the Standard Oil Company of California was making a net profit of 84¢ to 95¢ a barrel on its share of oil produced in the Middle East and was able to do so because of the aforementioned series of agreements which eliminated any threat of competition from any company in the world.

Again in February and May 1950, when all the above arrangements were in full effect, the United States Navy requested bids from five subsidiaries of the American companies. In response to this invitation for bids, identical prices were quoted. *The pricing arrangements entered into between the companies operating in the Middle East prevented these companies from competing with one another even for Government business.*

Following Pearl Harbor the Petroleum Administrator for War set up the Foreign Operations Committee to work out oil supply arrangements for foreign areas not controlled by the enemy and for meeting the requirements of United Nations armed forces. Such committee consisted of 14 members, 12 representing American companies and two British nominees representing Shell and Anglo-Iranian. Eighteen subcommittees were appointed. The same individuals whom the record shows to have been most active in carrying out the "DMOP" arrangements were members of these committees. Allocations of supplies were worked out on a percentage basis to the second decimal point and were identical in character with those found in the files of the companies for operations prior to Pearl Harbor.

Effect of cartel on post-war foreign economic program

Under the ECA program, large quantities of petroleum products have been purchased from the seven international companies which control and fix the world price of oil. The United States taxpayer pays for this through the funds appropriated for foreign military and economic aid. The 30th ECA report, covering the period April 1948 to November 1950, shows that procurement authorizations for petroleum and petroleum products amounted to $1,070,000,000, more than 11% of the total ECA commodity procurement authorizations. Of the total authorizations for petroleum, $384,000,000 represented purchases in the Middle East and $395,000,000 represented purchases in Latin America. It is interesting to note that approximately $724,000,000 of petroleum authorizations were destined to the countries in which Standard, Shell and Anglo-Iranian have maintained dominant positions. Mutual Security Administration, the successor to ECA, is seeking recovery of many millions of dollars from the American companies as "over charges" amounting to as much as 32 cents per barrel on crude oil.

4. DOMESTIC PRODUCTION CURTAILMENT TO SUSTAIN GULF COAST PRICE "CONSERVATION LEGISLATION"

The Federal Trade Commission, during its recent investigation, collected considerable evidence to sustain the conclusion that a great part, if not all, of the domestic effort to conserve petroleum through the "Conservation Commission" has been used to carry out the "conservation principle" of the "Achnacarry Agreement" as a support for maintaining high world prices for petroleum. It links Sir John Cadman, Sir Henri Deterding and the American Petroleum Institute to a program, beginning in December 1928 (three months after the "Achnacarry Agreement"), to raise the price of crude oil in the United States, not by a price-fixing agreement which would be illegal under the antitrust laws, but by selling to the Federal as well as the State Governments the theory that to permit crude oil to be produced in unlimited amounts would result in unreasonably low prices and that this in turn would be a waste of this natural resource.

During 1928 and 1929, the American Petroleum Institute sponsored a conservation plan in the United States with the understanding that Deterding, Cadman and Standard would "cooperate" in the foreign fields. The effort of the cartel to set up private oil conservation plans in the United States suffered a setback when Attorney General Mitchell, in a letter to Secretary of Navy Wilbur, who was acting as chairman of the Federal Oil Conservation Board, rules that neither the Federal Oil Conservation Board nor any Government officials had "authority to approve any action which is contrary to an Act of Congress or to the antitrust laws of any State."

Key on conservation

The American Petroleum Institute immediately began lobbying among the legislatures of the oil producing States for a State conservation and proration law. By 1935 a great number of States had adopted such laws. Then followed the passage of the "Connolly Hot Oil Law" supporting the State conservation laws, and finally the Congressional approval of the Interstate Oil Compact. Since practically all the States have rules that selling oil at a low price is economic waste and that economic waste is a violation of State laws, the conservation program has become merely a price-fixing mechanism.

Price-fixing

Meanwhile the world oil cartel has been using as its base price the quotation of Platt's Oilgram for the sale, on the American Gulf Coast, of a barrel of oil produced under conservation programs in the four adjacent States. Without a conservation program, the price of American oil would have been reduced to a truly competitive level.

Key

Since the cost of production outside of the United States is far below that within the United States, the adoption of the Gulf Coast price for crude oil has netted the parties to the conspiracy hundreds of millions of dollars profit on oil produced at low cost in foreign countries and sold in world trade at an inflexible price based on the high American Gulf Coast price.

5. THE ROLE OF THE WORLD CARTEL IN THE DEFENSE EFFORT

When the Iranian Government cancelled the concession contract of the Anglo-Iranian Oil Company in June 1951, the oil companies imme-

diately took the position that, in order to carry out the defense efforts of this country, it was necessary to grant the American countries immunity from prosecution under the antitrust laws in order to relieve the "tremendous world shortage" which resulted from the cessation of production in Iran. In 1950, when world production amounted to 9.5 million barrels a day, Iran was producing roughly 7% of such production.

In June 1951, the Petroleum Administration for Defense sponsored a voluntary agreement to receive antitrust immunity under Sec. 708 of the Defense Production Act for overseas operations by the oil companies, permitting the allocation of markets, the use of agreed upon supply schedules for the world outside of the United States, the regulation of production of world oil in all foreign countries, the regulation of imports and exports in the United States by agreement among the companies and any other mechanism which the world oil companies determined was necessary to offset the effect of the loss of Iranian production.

While it is true that certain international oil companies receive immunity from prosecution under the antitrust laws for activities which are approved under the voluntary agreement, such immunity does not extend to any past actions under the cartel arrangement and only to those future cartel actions which may be identical with activities receiving antitrust approval.

The Department of State takes the position that it will not interfere in any way with enforcement of the antitrust laws, but that institution of proceedings may have the effect of impairing the foreign-policy aims of that Department in the Middle East, since it may encourage groups urging nationalization and renegotiation of concession agreements.

6. CONCLUSIONS AND RECOMMENDATIONS

In view of the foregoing, there are reasonable grounds to believe that one American oil company (Standard Oil (New Jersey)) and its foreign subsidiaries joined with two foreign oil companies (Shell and Anglo-Iranian) in 1928 to establish a world cartel in oil; that shortly thereafter four competing American oil companies (Socony, Gulf, Standard of California and Texas) joined the cartel; that several more American companies, doing a foreign business, have shared in the cartel operations over the past 20 years; and that logical extension and continuance of the basic agreement have resulted in (1) control of all major oil producing areas in the world; (2) control of all refining operations in the world; (3) control of all patents, know-how and technology covering refining processes; (4) division of world markets; (5) maintenance of non-competitive prices for oil and its products throughout the world; and (6) control of oil transportation by pipeline and tanker.

It is recommended that a grand jury be convened in the Southern District of New York to inquire into the foregoing facts, and, if these facts are established and the grand jury so directs, that a criminal indictment be returned against the American oil companies and either the foreign companies or their subsidiaries found in the United

States; and that a civil suit be filed contemporaneously to dissolve the cartel, to dissipate the allocation and price-fixing arrangements as illegal, and to enjoin any possible future agreements, arrangements or action designed to recreate or to result in any activities eliminating competition in the petroleum industry.

H. G. Morison,
Assistant Attorney General.

MEMORANDUM FOR THE ATTORNEY GENERAL, OCTOBER 11, 1952

Re Inquiry concerning the legality under the antitrust laws of a proposal involving the purchase of Iranian oil and oil products.

This memorandum is restricted to the narrow question of the legality or illegality under the Sherman Act of a proposed arrangement involving the purchase from the National Iranian Oil Company by an American company, and arrangements for the resale of crude oil and oil products.

We understand that it is proposed that a group of American oil companies, probably four, shall organize a company, hereinafter for convenience called Company X, which will seek to enter into a contract for the purchase of crude oil and oil products from the National Iranian Oil Company. It is presently contemplated that the four oil companies which will organize and own Company X are not, at the present time, engaged in the purchasing, processing, or sale of any crude oil or oil products originating in the Middle East, but are competitors in the United States.

Company X will pay to National Iranian, at the time of execution of the contract, the sum of $100,000,000, as an advance payment on oil and oil products to be delivered to Company X by the National Iranian Oil Company over a period of ten or fifteen years.

It is anticipated that the purchases of oil and oil products by Company X from National Iranian will attain a probable volume of approximately twenty million tons per year, and that these purchases will account for a major part, if not all, of the Iranian oil and oil products available for sale.

It is proposed that the $100,000,000 to be paid at the time of the execution of the contract will be composed of $50,000,000 to be loaned to Company X by the Export-Import Bank; $37,500,000 to be advanced by the Anglo-Iranian Oil Company as an advance payment on oil and oil products which Company X contracts to sell to Anglo-Iranian; and $12,500,000 to be provided by the American companies who will organize and own Company X.

It is proposed that Company X shall have an assured outlet for at least seventy-five per cent of the crude oil and oil products which it will purchase from National Iranian. Thus, as an integral part of the program, it is planned that Company X will enter into a contract with Anglo-Iranian by which it is agreed that at least seventy-five per cent of the total quantity of the Iranian oil and oil products purchased by Company X will be sold to and purchased by Anglo-Iranian.

Anglo-Iranian is to resolve its controversy with Iran and to lift its blockade of Iranian oil. In return for this action, the National Iranian is to agree to deliver directly to Anglo-Iranian a total of five million tons of oil per year for a six-year period, totaling thirty million tons, having an estimated value of something over $300,000,000.

This quantity of oil is to be accepted by Anglo-Iranian in full settlement of all of its claims against Iran, and Iran is to agree to release all claims against Anglo-Iranian.

Three reasons have been assigned for the proposal that CompanyX contract to sell to Anglo-Iranian seventy-five per cent of its purchases of Iranian oil. The first is that Anglo-Iranian possesses marketing and transportation facilities which will enable it to handle this quantity of oil. Second, unless such arrangement is made, the British Government will not agree to a settlement of its dispute with Iran or lift its blockade of Iranian oil. Third, if any American company should attempt to deal directly for the purchase of Iranian oil, with the intention or expectation of selling this oil in markets heretofore regarded as those belonging to Anglo-Iranian, this action would seriously jeopardize the relations between the United States and Great Britain and might lead to prompt and vigorous reprisals from Great Britain, including, but not restricted to, the seizure by Great Britain of refining and distributing facilities in British territory owned by such American company.

Such an integrated plan, when regard is had for its substance, has the necessary and unavoidable effect of insuring Anglo-Iranian against invasion of its markets by American companies selling products produced from Iranian oil.

In determining whether or not a proposed course of action would violate the antitrust laws, it is necessary that consideration be given to the conditions which surround and form the background of the proposal, and the economic setting in which it will operate, to determine its probable effect on the domestic and the foreign commerce of the United States.

Up to the end of World War II, the United States was a large exporter of refined-oil products, produced from domestic crude oil. Oil produced in the United States comes largely from a great number of individual and corporate producers who are not affiliated with the major oil companies. These major companies buy most of their requirements of domestic crude oil from these independent producers at prices which afford to the producers a good profit. The principal profit to the oil companies in the refining of domestic crude oil lies in the margin between the cost to them of the crude oil and the prices at which the refined products are sold.

During World War II, large American companies made very substantial increases in the quantity of oil produced by them in foreign countries. The cost of this crude oil to them, including the actual production costs and the royalties which they pay, is only a fraction of the cost of American crude oil. The bookkeeping price of oil produced by these American producers in Venezuela and the Middle East is based on the American Gulf Coast price of crude oil minus a figure representing a charge for transportation to the United States. As a result, these companies derive a very high profit from the production of crude oil, particularly in the Middle East.

This fact has influenced the five major American oil companies who are presently interested in the production of crude oil in the Middle East to turn increasingly to the use of this oil instead of American-produced crude oil. Prior to World War II, these companies produced

a major part of their refined-oil products from domestic oil. Since the war they have produced a major part of their refined products from foreign oil.

The arrangements between private companies by which this situation has been brought about have had the effect of suppressing the development of our domestic petroleum resources so as to, among other things, limit and impede competition with Anglo-Iranian from the export of domestic petroleum and its products.

Prior to the first world war, American companies were dominant sellers of petroleum products in world markets. During and after the first world war, British and Dutch companies secured and developed new and important sources of oil in the Middle and Far East. In 1928, an agreement was reached between Anglo-Iranian, Shell, Standard of New Jersey, Socony, and a French company, whereby all oil production in Asia Minor and Arabia (excluding Persia) would be jointly shared by them for a period of ninety-two years. In the same year, an agreement was entered into between Standard of New Jersey, Shell, and Anglo-Iranian to share all world markets on the basis of their relative positions in each markets on the basis of their relative positions in each market in the year 1928.

Standard of California entered the Middle East picture in 1934 by securing an oil concession in Saudi Arabia. In 1935, Texas Company became a partner of Standard of California in the Saudi Arabian concession and they formed the Arabian American Oil Company (Aramco) to operate this concession. Thereafter Standard of California and Texas secured an additional concession on the Persian Gulf, operated as Bahrein Petroleum Company.

In 1947, Standard of California and Texas took into partnership Standard of New Jersey and Socony-Vacuum in Aramco. In 1948, the 1928 production-allocation agreement was revised so that the act of Jersey and Socony in joining with Standard of California and Texas Company in Aramco would not be considered a breach of that agreement.

In 1938, Gulf Oil Corporation secured a concession to produce oil in Kuwait. This principality was a British protectorate and Great Britain insisted that Anglo-Iranian Oil Company be taken into partnership with Gulf in the operation of this concession. Gulf yielded to this demand, and since then Gulf and Anglo-Iranian have each had fifty per cent of the sizable Kuwait production. Gulf thereafter entered into a twenty-year contract with the Royal Dutch Shell, which was a party to the 1928 agreements allocating production and world markets, whereby all crude oil secured by Gulf from Kuwait would be sold to Shell.

In 1947, 1948, and 1949, Anglo-Iranian entered into a series of agreements with Standard of New Jersey and Socony to sell to them a total of one billion barrels of crude oil produced by Anglo-Iranian from its share of the Kuwait production, over a twenty-year period. These agreements contain provisions that neither Jersey nor Socony could sell any of this crude oil or products thereof east of Suez. Socony further agreed that none of the oil which it secured from Anglo-Iranian would be delivered or processed at any point outside of the United States.

The effect of these arrangements has been to limit and restrict the freedom of American oil companies to market their oil products in foreign commerce, and their freedom to develop without restraint foreign sources of oil. The proposal would prevent a disruption of these arrangements by insuring to Anglo-Iranian sufficient supplies of oil to hold its present market position.

During the period from the early 1900's to the year 1950, Anglo-Iranian was the only company which had access to the crude oil produced in Iran. During World War II, the refinery at Abadan, Iran, was constructed and was thereafter operated by Anglo-Iranian. Because of the dispute commenced in 1950 between Iran and Anglo-Iranian, the latter's operations in Iran terminated, and the oil fields have been nationalized and the Abadan refinery has been expropriated by the Iranian government. Nationalization of Iranian oil has been recognized by the governments of both Great Britain and the United States as an accomplished fact.

Because of these occurrences, there exists now, for the first time in fifty years, an opportunity for an oil company other than Anglo-Iranian to compete for the purchase of Iranian oil.

The proposal now under consideration would have the necessary and direct effect of insuring that Anglo-Iranian will continue for at least a period of ten to fifteen years to exercise exclusive control over seventy-five per cent of the total quantity of oil purchased by Company X from the National Iranian Oil Company. As previously stated, it is anticipated that the total volume of purchases by Company X will amount to twenty million tons per year. In addition, the proposal envisages the delivery by National Iranian to Anglo-Iranian of five million tons of oil or oil products per year for six years. According to our information concerning 1950 operations, the Iranian oil fileds are capable of producing 205 million barrels of crude oil per year. We are advised that the refinery at Abadan, if it uses the entire production of Iranian crude oil, is capable of refining about 145 million barrels of petroleum products. The five million tons of oil or oil products which are to be delivered each year by National Iranian Oil Company to Anglo-Iranian will amount to 32,500,000 barrels. The twenty million tons which it is estimated that Company X will purchase each year amounts to 130 million barrels. Thus, the oil which is to go directly to Anglo-Iranian, plus the oil which is to be purchased by Company X, amounts to 162,500,000 barrels, or eighty percent of the total crude-oil production. This also amounts to well over one hundred per cent of the total output of the Abadan refinery. Since it is probable that Iran will insist on refining a major part of its crude oil, it seems evident that Company X will take practically all of the Iranian oil that is left after Anglo-Iranian gets its 32,500,000 barrels annually.

From this the conclusion is reached that this proposed program will have the necessary and direct effect of precluding American oil companies from the opportunity to compete for the purchase of at least seventy-five per cent of the total Iranian production, and possibly a substantially higher percentage. An arrangement, participated in by an American company or companies, having for its purpose or effect the denial of opportunity for American companies to compete for the purchase of so substantial a quantity of oil would constitute an unreasonable restraint upon our foreign commerce.

It is unnecessary to determine the antitrust aspects of the joint participation of competing companies in the purchase of Iranian oil, separate from the considerations above expressed. To do so would be unrealistic, since this would be to consider such a joint venture in a vacuum. However, it has been suggested that the advantages of having access by the owners of Company X to twenty-five per cent of the volume of purchases from Iranian Oil would outweigh the restraints resulting from the sale of seventy-five per cent to Anglo-Iranian. Though such a contention could not form a basis for a conclusion that an otherwise illegal plan could be legalized, it may be worthy of comment.

The prices to be paid by Company X to the National Iranian Oil Company have not been worked out in detail. With respect to crude oil, it is contemplated that the price to be paid will be related to the then current market price for Gulf Coast crude oil at United States ports north of Hatteras. As we have pointed out, the proposed purchase arrangement, however, is not to be restricted to the purchase of crude oil; the refinery at Abadan, Iran, is capable of processing the entire output of Iranian crude oil; and it is probable Iran would prefer to sell oil products rather than crude oil. No assurance is provided by the plan that the price which will be charged by Iran for these products will be sufficiently low to permit them to be shipped to the United States and sold in competition with petroleum products produced in the United States. We are informed that it will be difficult for Company X to provide or secure sufficient tanker facilities to transport to the United States its twenty-five per cent share of the purchases from National Iranian. It seems probable that Company X will have to dispose of some or even all of the twenty-five per cent of oil which is left to Company X by sale to one or more of the major oil companies which are now doing business in the Middle East, including Anglo-Iranian.

We conclude that without doubt the proposed plan would be illegal under the antitrust laws, and particularly the Sherman Act. This conclusion is dictated by the course of decisions of the Supreme Court in *United States* v. *American Tobacco Co.*, 221 U.S. 106; *United States* v. *Sisal Sales Corp.*, 274 U.S. 268; *United States* v. *National Lead Co.*, 332 U.S. 319; *United States* v. *Timken Roller Bearing Co.*, 341 U.S. 593. Decisions of the lower federal courts applying those of the Supreme Court further confirm this conclusion. *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 91 F. Supp. 333; *United States* v. *General Electric Co.*, 80 F. Supp., 898; *United States* v. *General Electric Co.*, 82 F. Supp. 753; *United States* v. *United States Alkali Export Association*, 86 F. Supp. 59; *United States* v. *Imperial Chemicals Co., Ltd.*, 100 F. Supp. 504.

Respectfully submitted.

NEWELL A. CLAPP,
Acting Assistant Attorney General.
GEORGE B. HADDOCK,
LEONARD J. EMMERGLICK,
W. B. WATSON SNYDER,
Special Assistants to the Attorney General.

Memorandum for the Attorney General, October 13, 1952

Re Iranian oil problem.

This memorandum is in response to your request for suggestions as to possible methods by which the objectives of the State Department might be attained in a manner which is not in conflict with our national policy of free competition.

The difficulty in suggesting any alternatives to the present proposal of the State Department is that the proposal which has been made by that department apparently has two basic objectives: (1) to provide funds to Iran in order to prevent that country from coming under Soviet domination; and (2) the perpetuation of control by Britain over a major part of the Iranian oil output, with protection to Anglo-Iranian Oil Company against invasion of its markets and with protection of the American market against competition from a major portion of the Iranian oil output.

The antitrust problems relate entirely to the second, and not to the first, of these objectives. It appears to us that the only legitimate interest of the United States Government is to prevent Iran from falling into Soviet hands. It would seem clear the United States should not try to accomplish the second objective, as such. These two objectives are not necessarily connected and we believe that progress can be made toward attainment of the first, which is fundamental, by eliminating the second. In other words, consideration should be given, in our opinion, to the resolution of the problem on a basis which will not require monopolistic rights over Iran's oil for Anglo-Iranian. To that end, we suggest a course of action along the following general lines:

1. The United States to make a loan directly to Iran, possibly from funds provided to assist friendly foreign nations in the development of their natural resources. (It is suggested that the Executive Adjudications Division determine whether or not such a loan can lawfully be made to Iran.)

2. As a condition to the making of such a loan, Iran to cancel its claims against Anglo-Iranian Oil Company and settle British claims based on the exportation of the refinery, by future delivery of an agreed upon amount of Iranian oil to Anglo-Iranian if necessary.

3. As a further condition to making the loan, the British to cancel all pertinent claims against Iran and to lift the blockade.

4. Iran to be free to contract with whomever it may desire for the operation of the Adaban refinery and for the sale of its oil on the basis of bids or negotiated contracts.

The foregoing proposal would remove the basic (antitrust) objection to the suggested State Department method of resolving this problem. If the course of action outlined above were followed, Iran would be free to sell its oil as it saw fit. It could sell exclusively to the British, or it could sell some of it to the British and some to American

companies; it could decide to sell exclusively to one or more American companies. The significant fact is that this possible method of providing needed financial assistance to Iran would not have tied to it, as a necessary and integral part, the prevention of competition in acquiring Iranian oil and its products or in marketing them.

For your consideration, and as soon as possible, we shall submit another memorandum outlining our views on (1) the legality or illegality (from an antitrust viewpoint) of various other aspects of the State Department proposal, (2) the tanker situation as it relates to the plan and (3) the basic position the Department should take with respect to a possible "settlement" of the litigation which in all probability will result from the pending grand jury investigation.

Mr. Haddock and Mr. Emmerglick concur in these views.

NEWELL A. CLAPP,
Acting Assistant Attorney General.

Memorandum to the Attorney General From Newell A. Clapp, Acting Assistant Attorney General for Antitrust, November 18, 1952

As indicated by the attached letter dated November 14, 1952, from James S. Lay, Jr., Executive Secretary of the National Security Council, the appended report on the above matter dated November 6, 1952, will be considered at a meeting of the NSC to be held tomorrow, November 19th, at 3:30 P.M. You have been invited to participate in the Council action on the report with particular attention to paragraph 4–*c*–(4) which recommends that, in the event of increased crisis in Iran, the United States "be prepared to avail itself of the authority of the President to approve voluntary agreements and programs under Section 708 (a) and (b) of the Defense Production Act of 1950, as amended." For your ready reference a copy of the Act is also attached.

As is its usual procedure the Senior Staff of the NSC finally considered this report today at its meeting, one day in advance of the Council meeting. Mr. Whearty of the Criminal Division, and Mr. Ephraim Jacobs of the Antitrust Division attended as Justice representatives and, in substance, advised the Senior Staff that, insofar as the Department is concerned, without indicating satisfaction with any particular plan which may now be in existence, there is no basic obstacle to the utilization of voluntary agreements and programs under the Sections cited for the solution of a particular crisis that might arise, but that the Department would necessarily have to reserve the right to comment upon or object to any specific agreement or part thereof which might be prepared in implementation of this recommendation. The Senior Staff was advised that the Department has machinery available to give rapid consideration, perhaps within a day or two, to any plan submitted for approval. Certain minor changes in the paper were suggested by the CIA and the Defense Department, none of which affects the interest of this Department.

As indicated above, the representatives of the Department at the Senior Staff meeting stated clearly that nothing said with respect to approval of a future plan for the purpose of solving a crisis that might arise should in any way indicate satisfaction with any existing plan. In making this comment they had in mind the Voluntary Agreement Relating to the Supply of Petroleum to Friendly Foreign Nations, dated June 25, 1951. For the position and views of the Antitrust Division on this plan, I call your attention to my memorandum to you dated August 13, 1952, wherein I recommended that the Defense Production Administrator be requested to withdraw requests for action under that plan, and your letter of September 2, 1952, to Mr. Henry H. Fowler, Administrator, Defense Production Administration, recommending that such action be taken. On September 10th Mr. Fowler acknowledged your letter advising that he had requested the views of the Secretary of the Interior concerning your recommendation. On Oc-

tober 9th the Defense Production Administration advised you further concerning the views of the Secretary of the Interior and the Secretary of Defense. Our analysis of the views submitted by these officials is now in progress. Our current position is still as indicated to you in our memorandum of August 13, 1952.

It is believed that the position you will wish to take at the Council meeting will be that taken by the Department's representatives at the meeting of the Senior Staff.

To avoid any possible delay in procuring the Department's files in the matter, for your ready reference I am attaching copies of the relevant documents taken from the Antitrust Division Sectional file.

DEPARTMENT OF STATE,
Washington, December 3, 1952.

Hon. JAMES P. MCGRANERY,
Attorney General.

MY DEAR MR. ATTORNEY GENERAL: As you know, the President, with the advice of the National Security Council, has been considering a program for the termination of the Iranian oil dispute, which, if it persists, can have serious adverse effects upon the foreign relations and the security of the United States.

On November 26, 1952, the President approved a memorandum for the Secretary of State, a copy of which is enclosed. As a consequence, several of the senior officers of the Department have arranged to engage in exploratory discussions, as requested by the President, with representatives of certain United States oil companies. We shall be meeting with these companies from time to time, and shall inform the Justice Department of the development of these discussions.

You may wish to designate an official of your Department who will be available to discuss these developments as they occur.

Sincerely yours,

HAROLD F. LINDER,
Acting Assistant Secretary for Economic Affairs
(for the Secretary of State).

MEMORANDUM FOR THE SECRETARY, NOVEMBER 26, 1952

As you are aware, I am considering a new approach to the Iranian oil dispute, which seriously threatens to deprive the free world of the oil resources of Iran on which depends the integrity and political independence of Iran itself. The approach would include the utilization of the authority granted me by the Congress in section 708(a) and (b) of the Defense Production Act of 1950 as amended. Under these sections I am authorized to approve a voluntary agreement or program, under which one or more United States companies, acting in cooperation with the Anglo-Iranian Oil Company, would purchase and market Iranian oil and oil products.

In order that I may determine what type of agreement and program would be most likely to contribute to the national defense by leading to a solution of this situation, I hereby request you urgently to engage in exploratory discussion with representatives of United States oil companies and with the Anglo-Iranian Oil Company for the purpose of determining what type of action by me would produce the result desired. You will, of course, consult with the Government of the United Kingdom and such other countries as you consider necessary. You should also keep informed the Attorney General, the Defense Production Administrator, the Petroleum Administration for Defense of the Department of the Interior, and the Defense Materials Procurement Administrator, and such other agencies as you think necessary.

DECEMBER 17, 1952.

Hon. JAMES P. MCGRANERY,
Attorney General.

MY DEAR MR. ATTORNEY GENERAL: As you are aware, the President has been considering a new approach to the Iranian oil dispute, a dispute which seriously threatens to deprive the free world of the oil resources of Iran and which threatens the integrity and political independence of Iran itself. This approach includes the utilization of the authority granted the President by the Congress in section 708 (a) and (b) of the Defense Production Act of 1950, as amended. Under this section, the President is authorized to approve a voluntary agreement or program under which one or more U.S. companies, acting in cooperation with the Anglo-Iranian Oil Company, would purchase and market Iranian oil and oil products. The President has also instructed the Department of State to engage in exploratory discussions with the representatives of the U.S. oil companies and with the Anglo-Iranian Oil Company for the purpose of determining what type of action by the President would produce the result desired. In a letter to you of December 3, 1952 by Mr. Harold Linder, Assistant Secretary of State for Economic Affairs, you were advised of this arrangement

and of the fact that several senior officers of the Department had arranged to engage in exploratory discussion with representatives of certain U.S. oil companies.

The first of these discussions was held on December 4, 1952. It was attended by representatives of the Gulf Oil Company, Socony Vacuum Oil Company, Standard Oil Company of California, Standard Oil Company of New Jersey, and the Texas Company. Formal invitation was by letter, the text of which is enclosed. The representatives of the Government at the meeting were: Dean G. Acheson, Secretary of State; David Bruce, Under Secretary of State; Paul H. Nitze, Director of the Policy Planning Staff; Henry A. Byroade, Assistant Secretary of State for Near Eastern, South Asian, and African Affairs; Harold Linder, Assistant Secretary of State for Economic Affairs; Adrian S. Fisher, The Legal Adviser; Loy Henderson, Ambassador to Iran; and Jeffrey C. Kitchen, Special Assistant to the Secretary of State. The meeting was opened by the Secretary of State. In his remarks the Secretary explained the present status of the dispute between the British and Iran and the extreme concern of this Government that there be a prompt solution to the dispute. He emphasized the importance of Iran to our national security and the deep concern of the Joint Chiefs of Staff with the situation. He indicated further that while we were thinking in terms of an arrangement which would enable Iran to sell its oil, and hence be able to pay compensation, it was also clear that the Government would not agree to any such arrangement unless there was a simultaneous agreement as to the proper method for determining compensation or, if this could not be obtained, at least a lump-sum settlement.

After a general discussion on the political situation in Iran and the necessity of adhering to the U.S. principle that there should be adequate and effective compensation when there had been nationalization, the statement was made by the Government representatives that if a satisfactory arrangement were made on compensation, the Anglo-Iranian Oil Company had indicated that it would be prepared to purchase ten million tons per year, three-quarters of which would be in products and one-quarter in crude. If the Iranian Government was to have enough revenues to permit it to survive as a nation and if it was to be able to provide adequate compensation from sales of the oil and products, it would of course be necessary for Iran to be able to sell substantially more oil and products. The question was put to the representatives of the oil companies present whether it would be possible for the oil companies to move in the neighborhood of an additional ten million tons of oil per year. A general discussion followed which brought out the following points: (1) it would be necessary to work out a price which would not do violence to the fifty-fifty concept prevalent in the area: (2) it was essential to have an agreement for compensation: (3) it was essential that the solution have the consent of the British Government; (4) that while Iranian oil would of course find its way back into the market and be absorbed by the market, none of the oil companies had any particular desire to move this oil, as they had all taken steps to increase their production in other countries when the Iranian oil went off the market. In fact, it was generally understood that they might have considerable difficulty with the countries in which they had con-

cessions when it should become necessary for them to cut back production in those areas because they were marketing Iranian oil. As result, the sentiment was expressed by the representatives of the oil companies present that, if possible, AIOC should take even more oil and that it would also be very desirable for Shell to absorb some of the Iranian oil which had to be moved.

Another meeting was held on December 9. Representatives of the same five companies were present. Representing the Government were: Dean G. Acheson, David Bruce, Paul H. Nitze, Henry Byroade, Harold Linder and Loy Henderson. At that meeting it was suggested that a possible solution might be the formation of a joint company which would pay out the AIOC and operate on a concession basis. Representatives of the Government made it clear that Iran would never agree to a concession. The alternative suggestions were made that a management company might be formed and operate the properties under a management contract which had many of the same elements. Representatives of the Government pointed out that although Iran would, of course, be willing to use foreign technicians, the Government of Iran would insist on reserving to itself the final power in managerial matters. There was considerable discussion of the problems of compensation, the relationship to the fifty-fifty formula, and of the other problems discussed at the meeting of December 4. Finally, the representatives of the Government said that even though those problems had not been settled, the heart of the problem was whether it was possible to go on the assumption that American companies would be able to give, in effect, the AIOC an option to deliver something in the neighborhood of ten million tons a year. It was agreed that the possibilities of working this out were sufficiently good to warrant Mr. Mitze's giving such an indication to the British during his planned trip to London and Paris.

Sincerely yours,

ADRIAN S. FISHER,
The Legal Adviser.

Report of the Attorney General to the National Security Council Relative to the Grand Jury Investigation of the International Oil Cartel—January 1953

Following cancellation of wartime suspension of anti-trust investigations and prosecutions of the oil industry, investigation of world-wide oil cartel activities was resumed. Much information had been obtained through file searches conducted under grand jury subpoenas in 1940 and 1941. Coincident with this resumption, the Special Committee of the Senate Investigating the National Defense Program, was engaged with public hearings on the same subject. The Chairman of that Committee had requested the Attorney General to look into cartel relationships which were alleged to have caused the United States Navy to pay high prices for petroleum products purchased from American companies doing business in the Middle East. Additional file searches were conducted in 1946 and 1947 and the American oil companies supplied copies of current contracts and other arrangements through 1949.

On December 2, 1949 the Federal Trade Commission passed a resolution to investigate "agreements entered into by American petroleum companies among themselves and with petroleum companies of other nations in connection with foreign operations and with international trade in petroleum and petroleum products." Subpoenas duces tecum were issued in January 1950. In order not to duplicate the investigative work of the Commission, this Department deferred further investigation until the Federal Trade Commission staff filed its report in October 1951. On December 2, 1951 the Select Committees on Small Business of both the House and Senate published a report on The Third World Petroleum Congress by Elmer Patman, appointed to investigate oil cartel activities. Thereupon a study and appraisal of all available material was made. The Attorney General decided that further investigation by grand jury process was necessary and recommended such action to the President who, on June 23, 1952, instructed that proceedings go forward immediately.

Early investigative efforts revealed the outline of a world cartel formed as early as 1928 by one American and two foreign oil companies. Over the succeeding years many other American companies joined the cartel. It appears that the uninterrupted extension and continuance of the basic cartel agreements has resulted in a world-wide pattern in which seven of the major oil companies—(1) control all major oil producing areas outside the United States; (2) control all foreign refining operations; (3) control patents, know-how and technology covering refining processes; (4) effectively divide world markets; (5) maintain non-competitive world prices for oil and its products; and (6) control foreign pipeline and world tanker transportation facilities.

Since petroleum and petroleum products are so essential to national defense, world economic recovery and defense of the free world, it is imperative that petroleum resources be freed from monopoly control by the few and be restored to free competitive private enterprise. Any full scale mobilization would depend more on petroleum products than upon any other commodity.

The domestic oil economy of this country is directly involved in and affected by cartel operations. Imports of crude oil into the United States are not free and subject to the natural competitive forces of our economy but are regulated by contracts and agreements between American companies. A cartel program for agreed upon imports is supplanting domestic production and retarding the drilling of new wells to find and earmark proven reserves as an underground stockpile, available for immediate production beyond present actual production. As Secretary Chapman pointed out on November 12, 1952 "We do not begin to have the reserve we should have in order to provide, not absolute security, but just the minimum of security that would give us room to maneuver in the opening months of a war". Deputy Petroleum Administrator J. Ed Warren publicly stated on October 31, 1952 that our domestic reserve capacity is less than one million barrels per day, which is only 15% of present domestic consumption. In his words—"That's a percentage much too small for comfort".

In order to maintain the fictitious pricing bases, the American cartel partners engage in uniform collusive bidding when our military seeks to buy petroleum products from them in foreign lands. The Department of National Defense has transmitted this evidence to the Department under the provisions of Title 41, U.S. Code, Section 151(d). The same pricing practices have been engaged in when selling to Mutual Security Agency for European delivery. At least three of the American companies have "over charged" the MSA approximately 70 million dollars in approximately a 3-year period, on the basis of lower prices they charged on sales "among themselves". At the request of MSA suits to recover these overcharges have been filed by me. Prices for Middle East oil, delivered to any point in the world, are based on the fiction of American Gulf Coast prices plus delivery costs to a given destination.

The international petroleum cartel is a serious threat to our national security. Prompt discovery of its dimensions and effects, and expenditious termination of the cartel and its effects can be accomplished only by pursuing the pending grand jury investigation.

Noting that we do not begin to have the domestic petroleum reserve we should possess in order to provide even the minimum of security that would give us room to maneuver in the opening months of a war, the Secretary of the Interior has said that he is not sure how we can go about getting the reserve we must have, and that the present profit incentive alone may prove inadequate to produce the results we must have. This problem exists in the presence of a world cartel whose total operations and total effects are not known but can quickly be ascertained by the grand jury through the subpoena process which it has set in motion to secure the facts.

As with petroleum reserves so also with aviation gasoline—we teeter on the edge of a great shortage in the grades the military must have. The prospect is for increasing shortage unless something is done and done quickly, in the words of the Secretary of the Interior. While recognizing industry's reluctance to build installations for manufacture of the essential alkylate, the Secretary emphasizes that the military need is imperative. This condition, in a period of high productivity and high profitability of company operations, is traceable to the cartel, for the American companies, by working within the cartel, can make more money by investing it abroad than by creating additional domestic facilities. The Paley Commission recently reported that private American investment abroad in the petroleum industry has risen from 1.3 billion dollars in 1940 to 4.1 billion dollars in 1948; and that the ratio of earnings to book value on such direct foreign investments was 27.6% in 1948, whereas the ratio on domestic petroleum investment was only 22.7% in the same year. Here again the condition can be illuminated, and speedily corrected, only by going forward with the grand jury investigation. Any other effort to find the facts and correct them will take so much longer to complete that it will subject the national security to continuing and increasing hazards.

Moreover, the cartel constitutes such a complex network of close relationships and joint interests among the major United States and foreign companies as to inevitably identify and entangle the United States with economic and political decisions of foreign governments as to oil. The dangers inherent in this situation ought to be ended in the most expeditious way.

The cartel arrangements are in effect private treaties negotiated by private companies to whom the profit incentive is paramount. The national security should rest instead upon decisions made by the Government with primary concern for the national interest. These private treaties and the other cartel arrangements have already served and can continue to serve as an agreed upon deterrent to development of our domestic resources by the major American companies. This is not to say that importation of petroleum and petroleum products should be discouraged. But the basic noncompetitive principle of a world cartel requires the major domestic producers to agree to give up both normal incentive and freedom to do the major work of enlarging our domestic petroleum resources. As a result, the cartel members, by their control over dominant segments of the domestic industry, regulate and determine the extent to which this nation shall be dependent on foreign supplies which could be cut off in time of war.[1]

This cartel has existed since 1928, but has been extended and complicated over the years. Its general structure and skeleton are known,

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[1] The industry itself through a January 1949 report of the National Petroleum Council, warned:

"Imports in excess of our economic needs, after taking into account domestic production in conformance with good conservation practices and within the limits of maximum efficient rates of production, will retard domestic exploration and development of new oil fields and the technological progress in all branches of the industry which is essential to the nation's economic welfare and security."

Since the date of this warning the pattern of dependence of foreign supplies from sensitive areas of the world has become more deeply imbedded; indeed, by the end of 1950 the excess of imports over exports of petroleum and petroleum products increased by almost 350 percent.

but its total outlines and proliferating effects are not known. They could be uncovered by a Congressional Committee but such an investigation could not make any determination as to the legality or illegality of the multiform operations and their effects. In the presence of clear evidence of criminality, as indicated in the staff report of the Federal Trade Commission, the grand jury investigatory method is clearly indicated, for two objectives must be achieved: (1) the cartel's total operations and effects must be brought to light in order that (2) it shall be promptly ended. These combined needs can be met only by grand jury investigation if the public interest in adequate petroleum supplies is not to be hazarded by needless delay.

Civil antitrust action is not adequate for the necessities. A civil complaint could be filed but it would have to be very narrowly drawn since only the skeletal facts are available. Similarly, an indictment could have been returned on the basis of the Federal Trade Commission's staff report and a small number of documents in the possession of the Department of Justice. But in order to do justice to the public interest and to be fair to the companies and heir principal officials, it is essential thta all of the relevant facts be known and weighed. A civil suit would have to be almost a subterfuge to secure evidence, through discovery proceedings available after a complaint is filed, by means of which an amended and much different complaint seeking different relief would ultimately be filed. A civil case, on the basis of experience with comparable activities, would require four to six years to complete. An indictment and trial could be concluded within twelve to fifteen months.

Conviction under an indictment will leave correction of the conditions found to be illegal to the companies by renegotiation, while a judgment in a civil case would put responsibility upon a judge to reorient a world industry by decrees acceptable to foreign governments. Correction will be accomplished much more rapidly and smoothly if the companies are obliged to set their houses in order, in view of the nature of the international petroleum industry.

The secrecy of a grand jury investigation makes it preferable to an investigation by any other means, such as a Congressional or interdepartmental committee, or a civil antitrust suit. Grand jury investigation will avoid the possibility of public, inflammatory exposures. The pending investigation is being conducted with the aid of a committee composed of representatives of State, CIA, Defense and Justice, specifically concerned with problems of sensitivity and the international repercussions of the inquiry, with provision for submission to the President of questions which cannot be otherwise resolved.

The Sherman Act was described by Chief Justice Hughes as our charter of economic freedom. The Supreme Court has repeatedly rejected proof of public benefit and business necessity as justification for cartel operations and has emphasized the primacy of economic freedom as the highest value for our economy. Our concern for an adequate future supply of petroleum is a concern ultimately for the preservation of freedom for ourselves and the free world. Free private enterprise can be preserved only by safeguarding it from excess of power, governmental and private. The selective socialization of business in the ancestral home of our free institutions points to the end result

of the cartels which flourished and became the outstanding characteristic of the British economy after Great Britain adopted the Import Duties Act of 1932. The world petroleum cartel is authoritarian, dominating power over a great and vital world industry, in private bands. National security considerations dictate that the most expeditious method be employed to uncover the cartel's acts and effects and put an end to them. The urgency of these considerations requires that the grand jury investigation go forward even though it might ultimately appear that indictments would not be warranted. The facts presently available strongly suggests that the high policy represented by the Sherman Act has been consciously and persistently violated by activities long since determined by the Supreme Court to be illegal.

The cartel should be prosecuted criminally if there is to be equal justice under the law and if respect for the law and its even-handed administration is to be maintained. Far from hurting us abroad, the investigation and prosecution of this cartel's activities will authenticate our protestations made continuously through the Marshall Plan, ECA, MSA, Point IV and NATO. We cannot promote free private enterprise and productivity abroad unless we are seen to conscientiously enforce our laws designed to preserve them for our own economy and our own domestic and foreign commerce. A decision at this time to terminate the pending investigation would be regarded by the world as a confession that our abhorrence of monopoly and restrictive cartel activities does not extend to the world's most important single industry.

THE WHITE HOUSE,
January 12, 1953.

Hon. JAMES P. MCGRANERY,
The Attorney General,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: As a result of factors which have emerged since the institution of the current grand jury investigation of the international activities of the major oil companies, I am of the opinion that the interest of national security might be best served at this time by resolving the important questions of law and policy involved in that investigation in the context of civil litigation rather than in the context of a criminal proceeding. However, I believe that this would be the case only if the companies involved agreed to the production of documentary material which the companies are required to produce under an existing order of court based on grand jury subpoenas.

Consequently, I ask that you promptly confer with representatives of the companies to ascertain if they will agree to enter into a stipulation to that effect. If they will, I ask that a civil proceeding be instituted accordingly and that appropriate steps be taken to cause the termination of the pending grand jury proceedings.

Sincerely yours,

(S) HARRY S. TRUMAN.

THE WHITE HOUSE,
Washington, April 10, 1953.

Memorandum for the Attorney General:

In view of the news story from your office in this morning's paper, would you look over the attached draft of the action taken at the Coun-

cil Meeting on April eighth, make such corrections in it as you think should be made and return the same to me at your convenience. We purpose to incorporate this material when approved by you in the record of the April twenty-second meeting.

ROBERT CUTLER,
Special Assistant to the President.

DRAFT OF ACTION TAKEN AT NSC MEETING OF APRIL 8, 1953

APRIL 9, 1953.

a. Concurred in the statement which the Attorney General proposed to make to the Court with respect to termination of the Grand Jury proceedings in the so-called oil cartel case, institution of a civil action under the anti-trust laws, and constitution of a committee drawn from Governmental departments and agencies to screen evidence and segregate from public disclosure evidence with national security implications.

b. Noted that the Secretary of State, while not opposing the action in *a.*, believes that a civil suit will seriously prejudice U.S. foreign relations in the Middle East unless the proceedings are conducted with due regard for all matters affecting the national security.

c. Recommended that the President request the Attorney General to initiate a restudy of the anti-trust laws with particular attention to the provisions relating to operations by Americans wholly outside of the United States.

d. Recommended that the President press for an extension, beyond its present expiration date, of Section 708 of the Defense Production Act of 1950 as amended, relating to voluntary agreements to further the objectives of said Act.

e. Approved that public announcement of the action under *a* be made by the Attorney General and at a time determined by him.

In the United States District Court for the District of Columbia

Civil Action No. 1779–53

[Filed April 21, 1953]

UNITED STATES OF AMERICA, PLAINTIFF

v.

STANDARD OIL COMPANY (NEW JERSEY) SOCONY-VACUUM OIL COMPANY OF CALIFORNIA, THE TEXAS COMPANY, GULF OIL CORPORATION, DEFENDANTS

Complaint

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendants and complains and alleges as follows:

I. JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendants under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Antitrust Act, and under Section 74 of the Act of Congress of August 27, 1894, c. 349, 28 Stat. 570, entitled "An Act to Reduce Taxation, to Provide Revenue for the Government, and for Other Purposes," commonly known as the "Wilson Tariff Act", in order to prevent and restrain continuing violations by the defendants, as hereinafter alleged, of Sections 1 and 2 of the Sherman Antitrust Act (15 U.S.C. Sections 1 and 2) and of Section 73 of the Wilson Tariff Act (15 U.S.C. Section 8).

2. Each of the defendants transacts business within the District of Columbia and may be found there.

II. DESCRIPTION OF DEFENDANTS

3. The following corporations are made defendants herein:

Name and address	Places of incorporation	Principal places of business	Abbreviated name
Standard Oil Co. (New Jersey) 261 Constitution Ave. NW., Washington, D.C.	New Jersey	New York, N.Y.	Jersey.
Socony-Vacuum Oil Co., Inc., Shoreham Building, Washington, D.C.	New York	do	Socony.
Standard Oil Co. of California, 1625 K St. NW., Washington, D.C.	Delaware	San Francisco, Calif.	Socal.
Texas Co., Munsey Building, Washington, D.C.	do	New York, N.Y.	Texas.
Gulf Oil Corp., 685 Maine Ave., SW., and 711 14th St., NW., Washington, D.C.	Pennsylvania	Pittsburgh, Pa.	Gulf.

Each of the defendants is a fully integrated enterprise carrying on, by its own acts or through numerous subsidiaries and affiliates in many parts of the world, exploration, production, transportation, shipment, refining, marketing, research and manufacturing operations with respect to petroleum or products thereof.

4. The acts and things herein alleged to have been done by the defendants were authorized, ordered or done by officers, agents or employees thereof.

III. THE COMMERCE INVOLVED

5. The trade and commerce involved herein is in petroleum and products thereof, and the words "petroleum and products" shall be deemed to mean crude oil and the principal products refined therefrom, including gasoline, fuel oils, lubricating oils, gas oils, diesel oils, white oils, and kerosene. Each of the defendants is engaged in the business of producing, refining, transporting, and/or marketing of petroleum and products. In the course of said business, the defendants, sometimes by subsidiary or affiliated corporations, regularly put vast quantities of said petroleum and products in commerce among the several States of the United States, and/or from the United States to foreign countries, and/or from countries to the United States, in interstate and foreign commerce of the United States. The value of said petroleum and products amounts to many millions of dollars each year.

6. The defendants, including their subsidiary and affiliated corporations, and other companies hereinafter referred to, which have been parties to the agreements and activities hereinafter described, control 81.5% of the world's estimated crude oil reserves and 90% of the estimated crude oil reserves outside the United States, Russia and Mexico. They account for virtually all of the production of crude oil in the Eastern Hemisphere (excluding Russia and countries under the domination or control of Russia), and for 50.6% of the crude oil output in the Western Hemisphere. They also control 55% of the refining capacity of the free world and own virtually all pipelines outside the United States. Furthermore, they control approximately two-thirds of the world's privately owned tanker fleet. They account for a major part of the petroleum and products marketed in most countries of the free world.

IV. OFFENSES CHARGED

7. Beginning in or about the year 1928, and continuing up to and including the date of filing this complaint, the defendant and other companies and persons have been and now are engaged in a unlawful combination and conspiracy to restrain interstate and foreign commerce of the United States in petroleum and products, to increase domestic market prices of petroleum and products imported into the United States, and to monopolize trade and commerce in petroleum and products between the United States and foreign nations, and said defendants and other companies and persons during said period of time have been and now are unlawfully monopolizing trade and commerce in petroleum and products between the United States and for-

eign nations, in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," as amended (15 U.S.C., Sections 1 and 2), commonly known as the Sherman Act, and Section 73 of the Act of Congress of August 27, 1894, as amended, entitled "An Act to Reduce Taxation, to Provide Revenue for the Government, and for Other Purposes" (15 U.S.C., Section 8), commonly known as the Wilson Tariff Act. Defendants threatent to continue said offenses and will continue them unless the relief hereinafter prayed for is granted.

8. The aforesaid combination and conspiracy and monopolization have consisted of a continuing agreement and concert of action among the defendants and other companies and persons, the substantial terms of which have been that they agree to and do:

(a) Secure, maintain and exercise control of foreign production and supplies of petroleum and products;

(b) Cause domestic production of petroleum and products to be curtailed or restricted in amounts related to importations of foreign petroleum and products and to the extent necessary to maintain the level of domestic and world prices of petroleum and products agreed upon by the defendants.

(c) Divide among themselves foreign producing and marketing territories;

(d) Agree upon, maintain and correlate domestic and world prices of petroleum and products;

(e) Establish and maintain quotas for the marketing of petroleum and products in foreign markets and areas;

(f) Control imports of petroleum and products into the United States;

(g) Control exports of petroleum and products from the United States;

(h) Exclude United States petroleum companies other than defendants and their subsidiaries and affiliated companies, from opportunity to engage outside the United States in the production and refining of petroleum and products, and from importing into the United States foreign petroleum and products of their own production or manufacture;

(i) Exclude United States petroleum companies other than defendants and their subsidiaries and affiliated companies, from opportunity to import into the United States petroleum and products produced in foreign countries by defendants and other petroleum companies;

(j) Enter into long term supply contracts to prevent sales of foreign produced petroleum and products to competitors;

(k) Eliminate or restrict competition in foreign markets;

(l) Cause the formation of local cartel agreements to suppress and eliminates competition in various foreign markets and areas;

(m) Refrain from duplicating facilities for the production, transportation, refining or marketing of petroleum and products in foreign countries, and arrange for common use of existing facilities.

(n) Monopolize patents and processes relating to the refining of petroleum and products;

(o) Control a predominant part of the world's commercial tanker fleet and exclude others from the opportunity of utilizing tankers for the transportation of petroleum and products in foreign trade; and

(p) Acquire the business and facilities of other companies engaged in the production, transportation, refining and/or marketing of petroleum and products outside the United States.

(q) Submit uniform noncompetitive bids for supply of petroleum and products required by military and civilian agencies of the Government of the United States.

9. In formulating and effectuating said unlawful combination and conspiracy and said unlawful monopolization, defedants have entered into various contracts, agreements, understandings and arrangements among themselves and with other companies and persons, and have done various things and have performed various acts, the principal ones now known to the plaintiff being the following:

(a) During late 1927 and early 1928, defendant Jersey, Royal Dutch Petroleum Company, hereinafter called "Royal Dutch", The "Shell" Transport and Trading Company, hereinafter called "Shell", and Anglo-Iranian Oil Company, Ltd., hereinafter called "Anglo-Iranian", held a series of conferences and meetings which resulted in an agreement known as the "Achnacarry Agreement," or "As Is Agreement of 1928" and bearing the simple title "Pool-Association" and dated September 17, 1928. This agreement recites the governing principles and understandings adopted for the purposes of eliminating competition among the parties, their subsidiaries and affiliates and stabilizing world markets in petroleum and petroleum products by having the parties and all competitors they met adopt market quotas, fix prices, curtail production and limit facilities. The agreement purported not to apply to the domestic market in the United States, but directly involved exports from the United States. It also contained provisions for inclusion of additional participants.

(b) On or about July 31, 1928, Near East Development Corporation, hereinafter called "Near East", when partly owned by defendants Jersey, Socony and Gulf entered into an agreement with Royal Dutch, Shell, Anglo-Iranian, Compagnie Francaise Des Petroles, Participations and Investments Limited, and Turkish Petroleum Company, for the joint exploration and production of certain petroleum concessions in Iraq held by the Turkish Petroleum Company. This agreement provided that the parties refrain from individually obtaining concessions for, and from producing oil in, the so-called "Red Line" area, which is that part of the Middle East bounded by the Mediterranean Sea, Red Sea, Indian Ocean, Persian Gulf, Western borders of Persia and the Black Sea. The agreement conceded to Turkish Petroleum Company the sole right to seek or obtain oil concessions in said area. At the time said agreement was executed, Anglo-Iranian held the exclusive concession for Persia which constituted the remainder of the Middle East, and the capital stock of Near East was owned by defendants Jersey, Gulf, and Socony, and by The Atlantic Refining Company, Standard Oil Company (Indiana), and Pan American Petroleum and Transport Company. Subsequently defendants Jersey and Socony purchased all the capital stock of Near East.

(c) In furtherance of the As Is Agreement of 1928, the defendant Jersey on January 4, 1929, incorporated Petroleum Export Association, Inc. under The Export Trade Act. During 1929 and 1930, de-

fendants Jersey, Gulf, Socal, Socony and Texas, together with Atlantic Refining Company, Cities Service Co., Continental Oil Co., Maryland Oil Co., Pure Oil Co., Richfield Oil Co., Shell Oil Company, Sinclair Oil Corporation, Tidewater Associated Oil Co., Standard Oil Co. (Indiana) and Union Oil Co. of California, executed membership agreements with Petroleum Export Association, Inc., and filed the same with the Federal Trade Commission in Washington, D.C. This association fixed quotas and prices for exports from the United States, in keeping with the principles of the As Is Agreement among themselves and in combination with foreign distributors. After the Federal Trade Commission called attention to the doubtful legality of such agreements, the Association became inactive in November 1930 and was finally dissolved in June 1936.

(d) In May 1929, the defendants and other members of the Petroleum Export Association, Inc., organized Western Petroleum Refiners' Export Bureau to operate as an exclusive export sales agent for approximately 60 independent refiners of the Mid-Continent area of the United States for the purpose of eliminating petroleum exports at prices lower than those agreed to and charged by members of the Petroleum Export Association, Inc. After a year's operation, the companies ceased to employ said Bureau as their export sales agent.

(e) In further implementation of the As Is Agreement, defendant Jersey and Royal Dutch, Shell and Anglo-Iranian entered into a series of agreements embodied in "Memoranda for European Markets", dated January 20, 1930, providing the parties should control production and marketing in European countries through local agreements, to be made in each area by local cartel committees empowered to fix marketing quotas on a basis of 1928 performance, fix prices, allocate major customers, and penalize variations therefrom.

(f) During the year 1931, defendant Jersey and Royal Dutch, Shell and Anglo-Iranian negotiated with defendants Gulf, Socony, and Texas and Atlantic Refining Company and Sinclair Oil Corporation to more closely and directly participate in the As Is programs on the basis of quotas reflecting sales positions in 1928. Defendants Gulf, Socony, and Texas, and Atlantic Refining Company and Sinclair Oil Corporation thereupon organized the "New York As Is Committee" to work out their respective participating sales positions.

(g) Defendant Jersey on May 23, 1932 acquired from Standard Oil Company (Indiana) 96% of the capital stock of Pan American Foreign Corporation for a consideration of $47,910,000 cash and 1,178,973 shares (or 11.6%) of Jersey's capital stock. Pan American Foreign Corporation was organized in 1931 by Standard Oil Company (Indiana) to acquire from Pan American Petroleum and Transport Company (96% subsidiary of Standard) all foreign assets, business and good will, including entire operations of Caloric, operating in Brazil; 95% of the capital stock of Lago Oil & Transport Corporation and its four subsidiaries which produced and marketed petroleum in Latin America; 98% of Mexican Petroleum Company, Ltd. with its six wholly-owned subsidiaries, 1,500,000 acres of oil lands, producing 33,000,000 barrels of oil per year, in Mexico; petroleum reserves in Venezuela; complete refineries at Tampico and Aruba; a fleet of tankers; and marine terminals in the United States and foreign countries. All the above assets and properties were transferred to sub-

sidiaries of defendant Jersey, which liquidated Pan American Foreign Corporation in 1936.

(h) Pursuant to the Standard Oil Decree of 1911, defendant Jersey divorced all ownership and control over Anglo-American Oil Company, Ltd., which after 1912 marketed petroleum products in the United Kingdom as an independent organization. Defendant Jersey in June 1931 acquired the entire capital stock of Anglo-American in exchange for non-voting preferred stock of Standard Oil Export Corporation, a wholly-owned subsidiary of Jersey.

(i) After a series of meetings in October, November and December, 1932, defendants Jersey, Gulf, Socony, and Texas, and Royal Dutch, Shell, Anglo-Iranian and Atlantic Refining Company on December 15 and 16, 1932 entered into a new agreement entitled "Heads of Agreement for Distribution", revising the framework for operations under the As Is Agreement and extending the "Memorandum for European Market" to all countries other than United States. The parties stipulated that the "Central As Is Committee" operate in London as a distribution agency while the New York committee handle "Supply As Is", i.e., all matters relating to gathering and shipping petroleum and products to areas for use and distribution under As Is quotas. Defendant Socal during 1933 commenced direct participation in this part of the conspiracy for certain restricted areas.

(j) In April, May and June 1934, the parties to the principal As Is Agreement and implementing agreements, including all of the defendants, entered into a codifying agreement entitled "Draft Memorandum of Principles", commonly called "DMOP", and a number of "Addenda" thereto, by which the allocations of quotas based on the year 1928 and determination of prices by majority rule were reaffirmed. The DMOP and addenda contained new conditions for sales of petroleum and petroleum products to competitors, regulated competitive expenditures for facilities and advertising, regulated supply and set up formulae for arriving at quotas, determining penalties and compensations for over-trading and under-trading and costs and expenses on adjustments of supply. This agreement was to be of indefinite duration and terminable on one month's notice but it was stipulated that such termination should not prevent the parties from attempting to continue to operate under As Is principles.

(k) In order to coordinate the control of patents and processes for the refining of petroleum throughout the world with the basic As Is Agreements, defendant Jersey entered into a series of patent pooling and licensing agreements with other companies to divide the control and licensing of patents between American companies on the one hand and foreign companies on the other hand. Pursuant to such arrangement Jersey, Royal Dutch and Shell entered into an agreement dated February 16, 1931, designated as the "VADUZ" Agreement by which defendant Jersey agreed to assign to International Hydrogenation Patents Company all patent rights relating to processes for the hydrogenation of petroleum, coals, shales, peats, lignites and all solid and liquid carbonaceous materials into marketable products, such as gasoline, kerosene and fuel oil. Royal Dutch, Shell, Anglo-Iranian and certain other companies were to be licensed on the condition that such licensees in marketing products outside the United States adhere to their allotted As Is positions.

(l) Pursuant to its commitments made in the VADUZ Agreement, defendant Jersey and its subsidiaries entered into a series of agreements with I. G. Farbenindustrie Aktiengesellschaft, a German corporation, referred to as "I. G.", to transfer I.G.'s hydrogenation patents and processes to a Delaware corporation organized under the name of Standard I.G. Company, generally referred to as "S.-I.G.", and another Delaware corporation organized as Hydro Patents Company. Hydro Patents Company was designated to license American refiners and, accordingly, during the years 1933 to 1935 defendants Socony, Socal, Texas, and Gulf, together with thirteen other major American petroleum companies, entered into what was known as "The Mutual Licensing Plan for the Hydrogenation Process", calculated to prevent the utilization of coal for the production of petroleum products, to prevent competition among both domestic and foreign refiners, to secure for I.G. in Germany and for Jersey in the rest of the world, including the United States, the benefit of all present and future methods and discoveries in the practice of hydrogenation. All licensees were compelled to agree to marketing quotas in partnership, with defendant Jersey and Royal Dutch, Shell and Anglo-Iranian in marketing the production of hydrogenation throughout the world.

(m) Numerous patents originating with I.G. and passing to S.–I.G. and hence to the defendant Jersey related to modern catalytic refining of crude petroleum for the manufacture of aviation gasoline, aromatic naphthas and valuable chemical products. On or about October 13, 1938, defendant Jersey and I.G. and S.–I.G. entered into agreements to share in royalties from the world-wide licensing of such patents. Many of the improvements in catalytic processes had been developed in the United States by defendants Jersey and Texas, and Shell Oil Company, Shell Development Company, Standard Oil Company (Indiana), the M. W. Kellogg Company and Universal Oil Products Company. On August 15, 1939 the aforesaid companies entered into the "C.R.A. Memorandum," by which M. W. Kellogg Company and Universal Oil Products Company were empowered to grant licenses in the United States, and International Catalytic Oil Processes Corporation, owned by Royal Dutch and Shell, was empowered to grant licenses throughout the world outside of Germany, Canada and the United States. The C.R.A. Memorandum pooled all patents and processes in the catalytic field and all licensees were required to grant back patent rights to the pool on any processes or improvements developed by licensees.

(n) After the close of World War II certain of the defendants entered into local cartel arrangements and agreements for the distribution of petroleum products in various parts of the world. Defendants Jersey, Socony, Texas and Socal, the latter two through California Texas Oil Company, Limited, hereinafter called Caltex, jointly owned by Texas and Socal, and Royal Dutch and Shell, organized a cartel arrangement for the Near East covering Egypt, Anglo-Egyptian-Sudan, Palestine, Transjordan, Lebanon, Syria, Cyprus and Turkey, renewing cartels organized in 1932 and 1938 which were dormant during the war. Marketing areas were shifted between the companies, quotas were established and prices were increased. In 1946, defendant Jersey, Texas and Socony, together with Royal Dutch, Shell, Union Oil Company of California and Tide Water As-

sociated Oil Company, reorganized a local cartel in Chile. Cartels were set up by various of the defendants during the period 1946 to 1949 in Liberia and Spain, and in Cuba and other Latin American countries.

(o) Defendants Socal and Texas, through Arabian American Oil Company, hereinafter called "Aramco", secured a concession to prospect for and produce petroleum in Saudi Arabia. In 1946, Aramco planned to build a petroleum pipeline from Saudi Arabia to the Mediterranean and was becoming a serious competitor in the distribution of Iraq petroleum by Jersey, Socony, Royal Dutch, Shell, Anglo-Iranian, and Near East. On March 12, 1947, defendants Jersey, Socony, Socal, and Texas, and Aramco, entered into a series of nine contracts by which defendants Jersey and Socony acquired 40% of the capital stock of Aramco from defendants Socal and Texas; defendants Jersey and Socony agreed to guarantee funds for the building of the proposed pipeline; defendants Jersey, Socony, Socal, and Texas, and Caltex, entered into a so-called "Off-Take" Agreement with Aramco dated March 12, 1947, by which it was agreed that over an 18-year period following the completion of the pipelines to the Mediterranean, Aramco will sell and deliver to said defendants Aramco's production in the same percentages as the stockholdings of the said defendants in Aramco bear to the total outstanding stock. Other provisions of the Off-Take Agreement preclude the possibility of Aramco making sales to others than the parties thereto and provides for an elaborate pricing formula based on United States Gulf Coast prices.

(p) On November 3, 1948, defendants Jersey and Socony, and Royal Dutch, Shell, Anglo-Iranian, and Near East entered into a new "Red Line" Agreement as a substitute for the 1928 agreement (set forth in paragraph 9(b) above). The new agreement reaffirms all the provisions of the original agreement except that it provides for the permission of Near East to permit stockholders to become stockholders in Aramco without accounting to the other parties to the Red Line Agreement for the proportion of Aramco's production allocated by Aramco to defendants Jersey and Socony. The new Red Line Agreement provides for the sale of the entire production of Iraq Petroleum Company to its stockholders (including defendants Jersey and Socony, and Royal Dutch, Shell, Anglo-Iranian, and Near East), in the same proportion as their ownership of stock in Iraq Petroleum Company.

(q) Defendant Gulf, acting independently of the other defendants, was successful in obtaining a concession for the production of oil in Kuwait, but later was forced to take in Anglo-Iranian as a partner. In 1935, oil was discovered and Gulf found it difficult to market its share of production because Gulf had agreed not to upset Anglo-Iranian's position "at any time or place" and had to recommit itself to cartel operations in Europe. On May 28, 1948, defendant Gulf entered into a 12-year contract with Royal Dutch and Shell to sell to the latter Gulf's share of crude oil produced in Kuwait. This transaction prevented Gulf from disturbing Royal Dutch, Shell and Anglo-Iranian markets in which Gulf had not become an established marketer. Shell was also able to meet its commitments in Europe and Africa and preserve its As Is position and, in addition, to supply Anglo-Iranian with oil which it needed.

(r) On September 23, 1947, Anglo-Iranian entered into a contract with defendant Jersey to sell to the latter eight hundred million bar-

rels of crude oil over a 20-year period contingent upon Jersey financing and becoming a part owner of a pipeline from Iraq to the Mediterranean. The price was set at a "cost-plus" being fixed at a definite percentage of profit throughout the 20-year period. Jersey agreed that it would not distribute any of this purchased oil east of Suez.

(s) On September 25, 1947, and March 1, 1948, defendant Socony entered into agreements with Anglo-Iranian to purchase from the latter over a 20-year period five hundred million barrels of crude oil on condition that Socony finance and become a part owner of the pipeline from Iraq to the Mediterranean. The price was also set at a cost plus figure, including the stipulation of a percentage of the profit throughout the 20-year period. In the second contract defendant Socony stipulated that all purchases under the contract would be imported into the United States and that no sales of products produced therefrom should be marketed outside the United States.

(t) Pursuant to a request for bids on crude oil on February 10, 1950 by the Armed Services Petroleum Purchasing Agency of the United States Government, defendants Jersey, Socony, Gulf, Socal and Texas, directly and through subsidiaries and jointly owned companies, submitted identical bids of $1.75 per barrel f.o.b. the Persian Gulf. Likewise, on a similar invitation for bids for crude oil dated May 29, 1950 by the Armed Services Petroleum Purchasing Agency, defendants Jersey, Socony, Texas and Socal, and Caltex, submitted identical bids of $1.75 per barrel f.o.b. Ras Tanura.

(u) On March 26, 1951, defendants Socal and Texas caused their jointly owned subsidiary Caltex, through its wholly owned subsidiary, Caltex (U.K.O. Limited, to enter into an agreement with Atlantic Refining Company for the sale of various petroleum products over a period of five years in quantities equivalent to the purchaser's requirements of such products during each and every contract year for marketing in northern and southern Rhodesia, Nysaland and British East Africa exclusively, at U.S. Gulf Coast prices as quoted in Platt's Oilgram, although all the petroleum products originated at the refineries of Caltex in the Persian Gulf and/or Indian Ocean areas. This agreement was a substitute for an agreement of December 26, 1944 between the same parties on the same terms for the purchaser's requirements in a larger area of Africa, including the Union of South Africa, Portuguese East Africa and mandated Southwest Africa, in addition to the smaller area in the later contract.

(v) Throughout the period from 1928 to the present time, defendants and other companies and persons entered into and have effectuated and adhered to a series of price-fixing agreements for determining and establishing "delivered prices" at any given destination point throughout the world, including the United States, for petroleum and products produced or refined in foreign countries, and produced or refined in the United States and exported therefrom, regardless of the actual place of origin or actual cost of transportation to such destination point. Said agreements have adopted the "U.S. Gulf Coast price" as the base upon which all of said delivered prices are calculated. Various of the agreements specify that the U.S. Gulf Coast prices are those which appear for crude oil and refined petroleum products in Platt's Oilgram, published daily in Cleveland, Ohio, and that to said prices are to be added an amount representing a charge for freight and insur-

ance from the Gulf of Mexico to the destination point, regardless of the actual point of origin or actual cost of transportation.

(w) Many of the defendants have acted through subsidiary corporations owned or controlled by them, either separately or jointly, which are not named as defendants herein in performing and carrying out the unlawful agreements and monopolization hereinbefore described, and have caused, directed and required said subsidiary corporations to conduct their respective business operations in conformity with said unlawful agreements and monopolization.

10. The defendants and other companies and persons, in further pursuance and effectuation of the aforesaid combination and conspiracy and monopolization, determined that joint ownership of companies organized to produce, refine and/or market crude oil or refined petroleum products was a successful method of eliminating competition between the owners and at the same time enabled them to more effectively exclude competition from oil companies who were not partners to the As Is arrangements. In many instances the participation in ownership of these jointly owned companies was identical with percentages of marketing quotas under the As Is agreements. Each of the joint owners has agreed not to directly engage in operations in the area covered by the jointly owned company. Such joint ownerships presently existing include the following:

Company name	Owners	Nature of business	Area of operation
United Petroleum Securities Corp	Jersey, Gulf and Atlantic Refining Co.	Refining and marketing.	France.
Bahrein Petroleum Co	Socal and Texas	Production and refining.	Bahrein.
Standard-Vacuum Oil Co	Jersey and Socony	Integrated	Europe, Asia and Africa.
Kuwait Oil Co. Ltd	Anglo-Iranian and Gulf	Production	Kuwait.
Arabian American Oil Co	Jersey, Socony, Socal and Texas	Production and refining.	Arabia.
Colombian Petroelum Co	Socony and Texas	Production and refining.	Colombia.
Ultramar Petroleum Co	do	Refining	Argentina.
Nederlandsche Kolonial Petroleum Mattj	Jersey and Socony	do	Sumatra and Java.
New Zealand Petroleum Co	Jersey, Socony, Socal and Texas	Production	New Zealand.
Nederlandsche Nieuw Guinea Pet. Mattj	Jersey, Socony, Socal, Texas, Royal Dutch and Shell.	Production and refining.	New Guinea.
Coldag Corp	Texas and Socony	Production	Latin America.
South American Gulf Oil Co	do	do	Colombia.
Trinidad Northern Ltd	Royal Dutch, Shell, and Anglo-Iranian.	do	West Indies.
Compania de Petroleo Gran Colombia	Socony, Socal and Texas	do	Colombia.
California Texas Corp. Ltd	Socal and Texas	Integrated	Worldwide.
South Mediterranean Oil Fields, Ltd	do	Production	North Africa.
Mediterranean Refining Co	Socal, Texas and Socony	Refining	Middle East.
Consolidated Petroleum Co., Ltd	Royal Dutch, Shell and Anglo-Iranian.	Production and refining.	Far East.
Middle East Pipe Lines, Ltd	Anglo-Iranian, Jersey, Socony	Transportation	Middle East.
Anglo-Egyptian Oil Fields, Ltd	Anglo-Iranian, Shell and Royal Dutch.	Refining	Egypt.
Trans-Arabian Pipe Line Co	Socal, Texas, Jersey and Socony	Transportation	Middle East.
Nederlandsche Aardolie	Jersey, Royal Dutch and Shell	Production	Netherlands.
Oldenburger Erdol	Socony, Jersey, Royal Dutch and Shell.	do	Germany.
Oesterreichische Mineraloelwerke	Socony, Royal Dutch and Shell	do	Do.
Companhia Africana de Petroles	Socony, Jersey, Anglo-Iranian, Royal Dutch and Shell.	do	Africa.
Shell-Mex and BP	Anglo-Iranian, Royal Dutch and Shell.	Marketing	Europe.
Overseas Tankship Corp	Socal and Texas	Transportation	Worldwide.
American Overseas Petroleum Co	do	Marketing	Do.
Nederlandsche Pacific Petroleum Mattj	do	Integrated	Far East.
Interprovincial Pipe Line Co	Gulf, Jersey and others	Transportation	Canada.
Portland Pipe Line Co	Jersey, Royal Dutch, Shell, Texas and others.	do	United States and Canada.
Muskeg Syndicate	Gulf, Shell, Jersey, Royal Dutch, Socony and Texas.	Production	Canada.
Near East Development Corp	Jersey and Socony	do	Iraq.

V. EFFECTS

11. The alleged combination and conspiracy and monopolization hereinbefore charged have had, among others, the following direct effects:

(1) Interstate and foreign commerce of the United States in petroleum and products has been unreasonably restrained;

(2) Imports of petroleum and products into the United States, and exports of petroleum and products from the United States have been restrained and monopolized;

(3) Production of petroleum and development of petroleum resources in the United States have been restricted and suppressed as a result of the illegal activities of defendants relating to imports of petroleum and products into, and exports of petroleum and products from, the United States;

(4) Defendants have acquired to the exclusion of others the power to import into the United States large quantities of foreign petroleum and products, at costs substantially below the costs of petroleum and products to other competing American oil companies, and defendants thereby possess substantial competitive advantages over other competing American oil companies in the manufacture and marketing in the United States of petroleum products;

(5) Defendants have been enabled successfully to maintain and increase the domestic market prices at which they sell petroleum and products imported by them into the United States, and products made by them from petroleum imported into the United States, at levels higher than would exist except for defendants' monopoly control over said imports;

(6) World prices for petroleum and products have been fixed, and world markets have been divided among the parties to the combination and conspiracy and monopolization above charged;

(7) Prices charged by defendants to agencies of the Federal Government for foreign petroleum and products required for military and defense purposes have been increased and maintained at high and artificial levels.

VI. PRAYER

Wherefore, the plaintiff prays:

1. That the aforesaid combination and conspiracy and monopolization be adjudged and decreed to be unlawful and in violation of Sections 1 and 2 of the Sherman Antitrust Act and of Section 73 of the Wilson Tariff Act.

2. That the court adjudge and decree that the defendants have unlawfully combined and conspired to restrain interstate and foreign trade and commerce of the United States in petroleum and products, to increase domestic market prices of petroleum and products imported into the United States, and to monopolize trade and commerce in petroleum products between the United States and foreign nations, and that defendants have unlawfully monopolized trade and commerce in petroleum and products between the United States and foreign nations, in violation of Sections 1 and 2 of the Sherman Act and Section 73 of the Wilson Tariff Act.

3. That each of the defendants, their officers, directors, agents, employees, subsidiaries, successors, and assigns, and all persons acting or claiming to act on behalf of the defendants or any of them be perpetually enjoined and restrained from continuing to carry out, directly or indirectly, the combination and conspiracy and the monopolization hereinbefore alleged, and all acts and provisions of contracts, agreements, understandings and arrangements which have been a part of or a means for the effectuation of said unlawful combination and conspiracy and monopolization, or any other acts, combinations or conspiracies, contracts, agreements, understandings or arrangements similar thereto;

4. That the court, in the exercise of its equity powers, order and provide for such further and other relief as it may deem appropriate and necessary to terminate said offenses, to dissipate their effects, and to prevent their recurrence.

5. That the plaintiff recover its taxable costs.

HERBERT BROWNELL, Jr.,
Attorney General.
EDWARD P. HODGES,
Acting Assistant Attorney General.
GEORGE B. HADDOCK,
Special Assistant to the Attorney General.
LEO A. ROVER,
United States Attorney.
LEONARD J. EMMERGLICK,
Special Assistant to the Attorney General.
W. B. WATSON SNYDER,
Special Assistant to the Attorney General.
GEORGE H. SCHUELLER,
MAX FREEMAN,
Trial Attorneys.

THE WHITE HOUSE,
Washington, August 6, 1953.

Hon. HERBERT BROWNELL, Jr.,
The Attorney General,
Department of Justice,
Washington 25, D.C.

DEAR HERBERT: On the attached sheet I have quoted two recent actions by the National Security Council; Action No. 868*c*, July 30, 1953, and Action No. 875*a* and *b*, August 6, 1953.

In due course you will receive a formal communication relative to the latter action, which concerns you.

Pursuant to Action No. 868*c*, we have not as yet received from the departments and agencies the inventory of recent studies that go therein. When received, they will be communicated to you.

With reference to the matter referred to in Action No. 875, I am inclosing a Memorandum from the Secretary of Defense which was dated July 31, entitled, "Proposed Course of Action with Respect to Iran," which was circulated to the Planning Board on August 3 and discussed at its meeting today.

The Department of State has stated it will furnish its views to the Planning Board.

Let me know what assistance, if any, I can give in this general connection.

Sincerely yours,

ROBERT CUTLER,
Special Assistant to the President.

	Action number
Project Solarium: (Memo for NSC from Executive Secretary, same subject, dated July 22, 1953; NSC Action No. 853)	868

* * * * *

c. Noted the President's request that any inventory be made of all recent studies by the various departments and agencies which contain proposed solutions of the problems affecting national security in the current Near East oil situation.

Near East Oil Situation	875

a. Discussed the deterioration of the situation in the Near East with respect to the status of the Western oil companies operating in the area.

b. Noted the President's request that the Attorney General, with the assistance of other appropriate departments and agencies, seek to develop a solution which would protect the interests of the free world in the Near East as a vital source of petroleum supplies.

SEPTEMBER 1, 1953.

Mr. JAMES S. LAY, Jr.,
Executive Secretary, National Security Council, Washington, D.C.

DEAR MR. LAY: This is to confirm my telephone conversation with you last evening concerning the draft of the National Security Council recommendation to the President concerning the so-called oil cartel anti-trust actions. The following phraseology for the proposed draft is acceptable to the Attorney General and it is believed, as a result of a telephone conversation which he had with the Secretary of State, that it is also satisfactory to Mr. Dulles.

"d. Agreed, with the concurrence of the Attorney General, to recommend to the President that in the interests of national security, in view of the Iranian situation, the Attorney General be requested to conduct proceedings in the so-called oil cartel suit now being carried on as indicated in NSC Action No. 766-a, with due regard for their effect upon United States foreign relations."

I want to thank you for your most helpful suggestions in this matter.

Sincerely yours,

THOMAS J. DONEGAN,
Special Assistant to the Attorney General.

Memo to the Files From Stanley N. Barnes, Assistant Attorney General for Antitrust, September 24, 1953

Mr. Herbert Hoover, Jr. called me today and requested and obtained a conference relative to the *Middle East Oil* situation. He tells me that he has had talks with various Governmental agencies and with representatives of the oil companies now interested in Middle East Oil. Such conferences, incidentally, have been held by him separately with each oil company's representative because they have refused to appear before him with any other oil company representative. He has also obtained some information from certain contacts he has in oil companies rather than through the presidents or recognized spokesmen. Tomorrow, September 25th, the British delegation are to open oil talks with him and other representatives of the Department of State, looking toward a possible solution, including, among others, this: The organization of a new corporation to be owned roughly 50% by American oil companies, 25% by Dutch Shell, and 25% by Anglo-Iranian Oil. The new company is to pay AIOC 75% of their investment in Iran, plus whatever may be agreed upon as an increased or decreased value, if any, due to the present situation. Percentages may vary, but it is estimated they will have to be put on that level. Mr. Hoover and Bedell Smith are convinced that the Government is in the situation so far that it would have to see to it that any American oil company with sufficient finances to substantially participate was given the opportunity. It is anticipated that probably all oil companies now engaged in the Middle East, plus six to fifteen additional oil companies, might participate. It is estimated that an initial payment of $5,000,000, $10,000,000 or $15,000,000 would be a requisite minimum participation. In addition to the financial investment, each participant, proportioned to his participation, would agree to accept pro rata share of anticipated production of 400,000 bbls. per day, with probably a minimum of 10,000 to 20,000 bbls. a day for any company participating. Any such agreement would envisage State Department aid in cutting down on present Middle East oil production equal to the increase due to the shutting down of Anglo-Iranian. This is recognized as one of the tough problems of any possible solution, because the various Middle East governments don't want to decrease their funds. It is also anticipated that accompanying any such agreement for Anglo-Iranian oil would be an insistence by the State Department upon a trade agreement covering American operations in Iran and Iranian operations in the United States, arbitration for disputes, etc., etc. The operation of the Anglo-Iranian properties would be under a long-term agreement, probably 40 years, with American, Dutch and British know-how in charge of production and refining facilities.

I pointed out to Mr. Hoover the impact of any such agreement on our present *Cartel* case. I told him we recognized the fact that if the National Security Council decided it was the thing to do from the

standpoint of defense, and if the Administration decided it was the thing to do from the political standpoint, influenced by the national defense, we could not say we would not go along. I threw out the idea, however, and told him it was merely thinking out loud, that if it developed into such a situation as he had outlined, and we felt that all was lost on our *Cartel* suit, that we might ask the Administration to support Congressional action to set up an antitrust immunity extending to foreign operations within certain industries.

Query: Could we save something from a bad situation by taking the position that any sale of this oil in the United States would have to be done without price-fixing on the open market, and with restrictions on any cut-backs on production on the part of the American companies obtaining the oil.

OCTOBER 6, 1953.

General ROBERT CUTLER,
Administrative Assistant to the President,
The White House,
Washington, D.C.

DEAR GENERAL CUTLER: You will recall that in August the President requested me to endeavor to develop a solution of the Near East oil situation, with the assistance of other appropriate Departments and agencies.

As I go forward, aided by my staff, to find a solution which will protect the interests of the free world in the Near East as a vital source of petroleum supplies, it appears necessary that we have not only the relevant studies made under the direction of the other Departments, but, more importantly, access to discussions with other nations looking to the achievement of our objective. Therefore, I am availing myself of the offer of assistance in your letter of August 6, advising me of NSC action 875–b. I hope that you will be able to arrange for prompt notice to me of scheduled discussions with representatives of other nations, so that I or a member of my staff may attend where this seems advisable.

Very sincerely yours,

——— ———,
Attorney General.

THE WHITE HOUSE,
Washington, October 9, 1953.

Hon. JOHN FOSTER DULLES,
Secretary of State, Department of State,
Washington, D.C.

DEAR MR. SECRETARY: On the attached sheet I have quoted two actions taken by the National Security Council—one on July 30, 1953, and the other on August 6, 1953.

The inventories referred to in NSC Action No. 868 have been furnished to the Attorney General. In certain cases where the material was very voluminous, such as was the case in the Department of State and Defense, representatives of the Attorney General have been directly in touch with representatives of those Departments.

As I reported to the Council at its meeting on August 27, 1953, the Attorney General appointed a Committee to carry out the request contained in NSC Action No. 875. This Committee consists of Assistant Attorney General Stanley N. Barnes, M. L. J. Emmerglick, and a third member still to be appointed. A copy of the terms of reference under which this Committee is acting is attached.

The Attorney General has recently advised the National Security Council, by a letter to me, of progress in carrying out the assignment given him in NSC Action No. 875. I quote from his letter:

> As I go forward, aided by my staff, to find a solution which will protect the interests of the free world in the Near East as a vital source of petroleum supplies, it appears necessary that we have not only the relevant studies made under the direction of the other Departments, but, more importantly, access to discussions with other nations looking to the achievement of our objective. Therefore, I am availing myself of the offer of assistance in your letter of August 6, advising me of NSC Action 875–b. I hope that you will be able to arrange for prompt notice to me of scheduled discussions with representatives of other nations, so that I or a member of my staff may attend where this seems advisable.

It is my understanding that discussions with representatives of other nations relative to the interests of the free world in the Near East as a vital source of petroleum supplies would be conducted through the Department of State. It is further my understanding, at the present time, that Mr. Herbert Hoover, Jr., is acting as a Special Representative of the United States Government, within the Department of State, to deal with problems related to an Anglo-Iranian oil settlement.

In order to assist the Attorney General in discharging his responsibility under NSC Action 875, will you make arrangements to meet the request in the last sentence of his recent letter to me, quoted above.

Sincerely yours,

ROBERT CUTLER,
Special Assistant to the President.

July 30, 1953 — *Action number*

Project Solarium -- 868

* * * * *

c. Noted the President's request that an inventory be made of all recent studies by the various departments and agencies which contain proposed solutions of the problems affecting national security in the current Near East oil situation.

August 6, 1953

Near East oil situation-- 875

a. Discussed the deterioration of the situation in the Near East with respect to the status of the Western oil companies operating in the area.

b. Noted the President's request that the Attorney General, with the assistance of other appropriate departments and agencies, seek to develop a solution which would protect the interests of the free world in the Near East as a vital source of petroleum supplies.

TERMS OF REFERENCE

a. To propose new or alternative legal relationship between the oil companies of the Western nations and the nations of the Near East that will protect the interests of the free world in the Near East as a vital source of petroleum supplies.

b. The proposed legal relationship in *a.* above will be developed in the light of:

(1) The NSC recommendations contained in pages 12–16 of reference report NSC 138/1. approved by the President January 9, 1953:

(2) The objective of the Department of Justice to overcome the obstructive tactics adopted by the major defendant oil companies in the so-called cartel case (U.S. v. Standard Oil of New Jersey, et al.);

(3) Recent developments in the relationship between Western oil companies and the government of Iran;

(4) The trend towards nationalization of oil properties in other Near Eastern nations; and

(5) Problems arising from the application of the Antitrust laws of the United States to the legal relationships proposed.

c. It will be assumed that the enforcement of the Antitrust laws of the United States against the Western oil companies operating in the Near East may be deemed secondary to the national security interest to be served by:

(1) Assuring the continued availability to the free world of the sources of petroleum in the Near East, and

(2) Assuring continued friendly relationships between the oil-producing nations of the Near East and the nations of the free world.

In the event of a conflict between any proposed legal relationships and the enforcement of the Federal Antitrust laws, the proposed solution will include, without recommendation, appropriate legislative, executive or administrative action required to remove such conflict.

d. In the proposed solution, the extent of the military and economic needs of the nations of the free world in the Near Eastern oil supply, the importance and objectives of friendly relations among the nations

of the Near East and free world, and the economic and cultural support to be afforded to the oil producing nations, will be determined by the departments and agencies having primary interest in such areas, such as the Departments of State and Defense, the Foreign Operations Administration, the Office of Defense Mobilization, as well as other agencies having interests therein.

OCTOBER 15, 1953.

To: The files.
From: L. J. Emmerglick.
Subject: Conference with State Department and Department of Defense officials concerning Middle East oil.

Yesterday I held a meeting with Messrs. John Evans and Robert Eakens of State, and Commander Goodspeed of Defense, for the purpose of establishing methods of liaison and cooperation in our efforts to develop a proposal in response to NSC Action 875 b.

The meeting was held in Mr. Schneider's office and he was present for a brief period.

I emphasized the need to get the relevant studies of State and Defense. They conceded that they had not prepared inventories. State said that it was very difficult to distinguish between materials representing State's policy and materials representing the views of individuals or units. Defense said that they had practically nothing which was not in the possession of State. The latter agreed to work up an inventory and to make materials in the nature of reports from Petroleum Attaches and other officials available to us.

The meeting was mainly devoted to a discussion of our need for access to discussions with foreign nations looking to a solution of the whole or part of our objective. I pointed out that Mr. Hoover is going forward with new discussions which would require the grant of antitrust immunities for a proposed solution of the Iranian problem. I emphasized that we could not do effective work in the formulation of a proposal if market arrangements should be worked out to meet the Iranian problem which would fasten for a period of years a regime of agreed upon cutbacks or artificial controls, likewise agreed upon, in the countries of the Middle East where petroleum production activities are or may be carried on. This would establish legal relationships at the time when the Attorney General is charged with the task of proposing new legal relationships. Therefore, we need access to discussions relating to the Iranian problem as well as to more general discussions. This seemed to be a rather startling idea to State. They are keeping the general and Iranian problems separate, but they could readily see, they said, on the basis of my further elaboration, that we could not do so. Therefore, they agreed that they would institute consideration within State of the need for a broader kind of liaison and cooperation than they had been thinking of.

I sounded out both agencies on the idea of a new company to take care of Iranian production and marketing, composed of American companies not presently in the Middle East. Commander Goodspeed seemed to be fully ready to answer such a question. He hastily said that this would present serious questions for the national defense since these companies would only be able to market the oil in the United States and this would deter incentives to develop our own resources. I

pointed out the obvious answers and simply suggested that we might wish to go into this with the representatives of State and Defense at a later time. The reaction of State was that there might be some political questions to be considered in the event that such a proposal should come forward. Then State indicated that they were thinking of a solution which would avoid some of the difficulties presented by the kind of approach being explored by Mr. Hoover. Mr. Eakens threw out the suggestion that the International Bank might simply contract to sell quantities of oil to Jersey and the other major companies, by individual contracts. Upon questioning him for further details, he indicated that the price would be lower than the presently prevailing price. He wanted to know what we would think about such an approach. I indicated that it might be a fruitful one if there was no real concerted action among the petroleum companies but cautioned that modern notions of conspiracy are not limited to a covert meeting of conspirators on a dark night in some secluded corner with heads close together.

The meeting concluded with the understanding that we would hear further from State on procedural arrangements for future cooperation, and that we would have another meeting to discuss the feasibility of a new corporation made up of non-cartel members to solve the Iranian problem as part of an overall attempt to create new legal relationships.

THE WHITE HOUSE,
Washington, October 27, 1953.

Memorandum for the Secretary of State:

On August 6, 1953, the National Security Council took the following action, which the President approved:

NSC Action No. 875*b*:

Noted the President's request that the Attorney General, with the assistance of other appropriate departments and agencies, seek to develop a solution which would protect the interests of the free world in the Near East as a vital source of petroleum supplies.

Following conferences with the State Department and the Attorney General, it is proposed to offer the following agreed-upon modification of the above-mentioned action at the Council Meeting on October 29:

In view of recent developments in the Near East, modified NSC Action No. 875*b* by directing the Secretary of State, until further instructions, to assume direction of steps being taken to protect the interests of the free world in the Near East as a vital source of petroleum supplies, consulting from time to time during negotiations with the Attorney General on legal aspects of the subject and with other appropriate departments and agencies according to their interests.

R. C.

DEPARTMENT OF STATE,
Washington, December 16, 1953.

Hon. STANLEY N. BARNES,
Assistant Attorney General, Department of Justice.

DEAR MR. BARNES: In accordance with our conversation of yesterday, I am sending you herewith the following:

(1) A copy of a letter of the Anglo-Iranian Oil Company, dated December 3, 1953, sent to a number of U.S. oil companies inviting them to attend a conference in London to discuss a solution of the Iranian Oil problem;

(2) A copy of a letter addressed to the Secretary of State by Orville Harden, vice president of Standard Oil of New Jersey under date of December 4, 1953, advising him of the receipt of the letter of invitation described in (1) above, and requesting advice as to whether the Department perceived any objection to accepting the invitation tendered;

(3) A copy of the reply of the Acting Secretary of State to Mr. Harden, dated December 8, 1953, advising that the Department perceives no objection to acceptance of the tendered invitation by the companies addressed, with the understanding that Mr. Herbert Hoover, Jr., consultant to the Secretary, will be present at the discussions.

You will recall that the receipt of the letters described in (1) and (2) above was communicated to you and the Attorney General and that the general form and content of this reply ((3) above) was approved by you and also by the Attorney General with the statement that it was believed that Mr. Hoover should be present at the discussions.

Prior to the writing of the letter by the Acting Secretary, described in (3) above, representatives of various of the companies invited to the discussions called at the Department and were advised by the Deputy Assistant Secretary for Near Eastern, South Asian and African Affairs that it was believed to be in the interest of the United States that these discussions be held and that the American companies participate.

Mr. Hoover is in London and has been advised of the views of the Attorney General and yourself that he should be present at the discussions.

Sincerely yours,

HERMAN PHLEGER,
The Legal Adviser.

A. E. C. DRAKE,
New York, N.Y., December 3, 1953.

Mr. E. HOLMAN,
Standard Oil Company (N.J.),
New York, N.Y.

DEAR MR. HOLMAN: Since Mr. Hoover returned from his visit to Tehran, I have had the benefit of exchanging views with him on the

general lines along which a solution of the Persian oil situation might be sought.

Mr. Hoover has informed me that the ideal solution, in his opinion, would be for the Anglo-Iranian Oil Company to return to Persia alone, a view which is, of course, held by me and is, I think, shared by you. He has, however, said that he doubts whether it is possible to achieve this, and his conversations in Tehran led him to the view that a solution might be found through the medium of a group of companies rather than through a single company.

As you will have seen from the press, efforts are now being made to restore diplomatic relations between the British and Persian Governments, which, if successful, would lead to the resumption of direct talks on the oil problem between the British and the Persians.

Whilst I should have preferred to have seen these measures brought to conclusion first, Mr. Hoover has stressed the urgency in the situation as he feels very strongly there are inherent risks in it which might become dangerous if the situation drifts. He has suggested to me that valuable time could well be saved if discussions could be opened with representatives of companies able to make some contribution to a solution of the problem who might, in the interests of progress and stability in the countries of the Middle East, be ready to participate in such a group. He has also suggested that those talks might take place on the footing that the subject to be discussed was at this stage entirely hypothetical and without commitment of any sort to any of the companies taking part in them.

On this understanding, and recognizing as Mr. Hoover and I do, and I am sure you will too, the vital necessity of avoiding unwarranted speculation lest the moves now in train at official levels should be prejudiced by rumours leading to preconceived notions of a specific form of settlement, I would be very pleased to know if you would be ready to discuss with me and my colleagues the possibility of your company participating in a group. The discussion would range over the wide area not only of the conditions under which such a group might be formed, but also of the terms and conditions under which the members of the group would be prepared to enter into commitments to dispose of Persian oil. These terms might later become the subject of negotiations with the Persian Government.

In conclusion I should mention that I am addressing similar invitations to take part in these talks to Sir Frederick Godber, Mr. Brewster Jennings, Mr. R. G. Follis, Mr. J. S. Leach and Mr. S. A. Swenerud, as I have felt that the companies which could make a constructive contribution to a solution are those who are now engaged in the production of oil in the Middle East and in the marketing of it on a large scale internationally. So long as the discussions are purely hypothetical, it seems desirable to confine them to the smallest possible circle of representatives drawn from the above groups.

If it would suit you, I would suggest that the discussions should take place in London at your earliest convenience and in the meantime, might I again ask you to do all you can to avoid unwarranted speculation as to future developments.

With kindest regards,

Yours sincerely,

ANGLO-IRANIAN OIL CO., LTD.
Per: (Signed) A. E. C. DRAKE
WILLIAM FRASER, *Chairman.*

28-516—74——5

STANDARD OIL CO.,
New York, N.Y., December 4, 1953.

Hon. JOHN FOSTER DULLES,
Secretary of State,
Washington, D.C.

MY DEAR MR. SECRETARY: In Mr. Holman's absence, I am taking the liberty of enclosing a copy of a letter dated December 3, 1953 and addressed to him by Sir William Fraser. Your familiarity with the Iranian problem makes it unnecessary, I am sure, for me to expand upon Sir William's presentation.

We have explained to the Department on many occasions during the past two and a half years that, in our opinion, the best solution of the Iranian problem lies in the reestablishment of relations between the Iranian Government and the Anglo-Iranian Oil Company on some mutually satisfactory basis. At the same time, we know Mr. Hoover's view (as outlined in Sir William's letter) that such a solution is impossible but that a solution might be found through the medium of a group of companies.

From the strictly commercial viewpoint, our Company has no particular interest in entering such a group but we are very conscious of the large national security interests involved. We, therefore, are prepared to make all reasonable efforts, consistent with the maintenance of a sound legal and moral position, to achieve a solution of the problem.

I am sure that, before replying to Sir William, Mr. Holman would appreciate knowing whether the Department perceives any objection to accepting the tendered invitation.

Sincerely,

(S) ORVILLE HARDEN,
Vice President.

DECEMBER 8, 1953.

Mr. ORVILLE HARDEN,
Vice President, Standard Oil Co.
New York 20, N.Y.

DEAR MR. HARDEN: In the absence of the Secretary, I should like to reply to your letter of December 4, 1953 regarding an invitation to Mr. Holman, President of your company, and the officers of certain other American oil companies have received from Sir William Fraser to discuss the Iranian oil problem and possible solutions to the current Anglo-Iranian dispute.

The Department of State perceives no objection to the acceptance of the tendered invitation by the companies addressed, with the understanding that Mr. Herbert Hoover, Jr., Consultant to the Secretary, will be present at the discussions.

Sincerely yours,

(S) WALTER B. SMITH,
Acting Secretary.

MEMORANDUM FROM ASSISTANT ATTORNEY GENERAL BARNES TO THE ATTORNEY GENERAL, DECEMBER 10, 1953

The Texas Company is the only cartel defendant which has advised me personally of Sir William Fraser's invitation to meet in London. Through Mr. Phleger we know that Socony and Jersey have asked the State Department if attendance is permissible.

Do you believe we should send a letter to Mr. Phleger following up our general letter re advisory committees, pointing out that Mr. Hoover, representing the Government, should extend the invitation to the preliminary meeting to the oil companies, rather than having them meet at Fraser's invitation—or would this be a presumptuous act? If Hoover did it, it would fall within the usual criteria established for advisory committees. Attached is memorandum from Emmerglick on the subject.

U.S. V. STANDARD OIL CO. (NEW JERSEY) ET AL., CIVIL ACTION NO. 86–27

This is in response to your telephone request this morning for my views on projected discussions in London among seven oil companies. I understand that we have been sounded out by The Texas Company on whether we would give approval to discussions on the subject of Iranian oil among Anglo-Iranian, Shell and the five [United States companies who are] defendants in the oil cartel case. Mr. Hoover is now in London but the invitation for such discussions has gone out from Sir William Fraser, of Anglo-Iranian.

I think that out of an abundance of caution we must look upon the inquiry from Texas as a possible attempt by the cartel companies to secure that kind of approval from the Attorney General which would ultimately make it impossible to go on with the cartel case.

The Attorney General could not properly approve a meeting of the United States cartel companies and their foreign colleagues called at the invitation of Anglo-Iranian. If the invitation should go out from Mr. Hoover, however, then a meeting could be had which would enable Mr. Hoover to call upon the American companies as advisers to assist him in working out a proposal (for later discussion within the United States Government) for solving the Iranian problems. This type of meeting would be similar to the Advisory Committee activities as to which we are on record as insisting upon five essential criteria. Mr. Hoover, announcing that these criteria would be followed, could hold a meeting with the American companies and also with the two European companies, and this would require no more of a commitment from the Attorney General than has been given other advisory committee activities. In other words, we would be saying that activities carried on within the framework of these criteria would not be treated by us as independent violations of the antitrust laws.

But if the oil companies are able to persuade the State Department that they must have in advance the immunity provided for by Section

708 of the Defense Production Act, then I should like to emphasize that such immunity would make it impossible for us to go forward with the cartel case. I think that we should not now suggest it, but late last year President Truman took steps looking to the solution of the Iranian petroleum problems by utilizing his authority under 708(a) and (b) and he requested the State Department to proceed on his behalf to attempt a solution of those problems. If under pressure of necessity resort is to be made to the Defense Production Act that would end our hope of continuing with the cartel case, but at least the responsibility should not be placed on the Attorney General. Use should be made of 708(a) and (b) rather than 708(c) so as to avoid the need for the Attorney General to approve or fail to approve. It is my fear that if the Attorney General should fail to approve that would not be an end of the matter in view of the recent reversal of the NSC referral of Mid-East petroleum problems to the Attorney General, and all that that reversal signifies.

Therefore, it would seem that our course should be to suggest that an attempt be made to have these discussions, initially, at least, take place under the Advisory Committee framework, and see how much can be accomplished that way.

It seems unfortunate that Mr. Hoover is looking only to the cartel companies to solve present problems, and is not bringing about any invitation to other American companies. But I suppose that we have done everything we can to secure State Department agreement that such an approach be employed.

DEPARTMENT OF STATE,
Washington, D.C., January 8, 1954.

Hon. HERBERT BROWNELL, Jr.,
Attorney General.

DEAR MR. BROWNELL: This will confirm my telephone conversation with you yesterday, in which I told you of the meeting held in the Secretary's office on January 6, at which the Iranian oil matter was the subject of discussion. Secretaries Humphrey and Wilson, Ambassador Aldrich, and representatives of the five American oil companies which participated in the recent London discussions were present.

The oil company representatives reported on the London discussions, and it became evident that such progress was being made that it seemed essential that the anti-trust phases of any proposed arrangement be explored and determined without delay. At the same time the oil company representatives advised that further progress in the London discussions would be prejudiced if, while the anti-trust phases were being explored, the pending suit against them was actively pressed. They told the Secretary that they considered it highly desirable that a motion set for hearing by the Department of Justice January 13, 1954 for the designation of a new judge to hear the cause be contained pending their discussions with you regarding the proposed Iranian arrangement, which they thought should start the coming week. They suggested that there be a *two-weeks* postponement of the motion, at which time further decisions could be made in the light of developments in the meantime.

This morning we received a cable from Mr. Hoover, now in London, advising that he will arrive in New York on January 9 and will be in

Washington on January 11 prepared to arrange for discussions by the oil companies with the Department of Justice regarding the proposed Iranian oil arrangement. In his cable he points out that developments are progressing so rapidly in Iran and London that it will probably be necessary for him to return to London about January 16. He points out that our Government has been putting pressure on the United Kingdom and its highest officials over a long period to solve the Iranian problem in aid of our highest security interests and that in this connection our Government has undertaken obligations to the new government of Iran for the same purposes; that if our Government was now to determine that it could not proceed at this time because of antitrust considerations and as a result negotiations were suspended, the consequences might well be of the gravest kind. He has suggested that we pass these comments to you and other interested parties in advance of conferences next week in Washington.

I have been advised that representatives of the oil companies involved are standing by and will be prepared to meet with you as soon as arrangements to that end have been made by Mr. Hoover.

Sincerely yours,

HERMAN PHLEGER,
The Legal Adviser.

JANUARY 8, 1954.

Memorandum.

Subject: Iranian Oil.

Following today's meeting of the NSC, Mr. Wilson, Mr. Humphrey, Mr. Brownell, Mr. Anderson and I talked about the Iranian oil situation and the importance of quickly getting sufficient legal clearance for the American companies so that they could participate in this important matter.

The Attorney General felt that he could give some sort of agreement not to sue on account of the prospective new arrangement if this were requested in the national interest by the National Security Council.

As regards the pending lawsuit, the Attorney General felt that this would have to be continued, but that it might be possible to do so in a way which would avoid undesirable publicity while the new arrangements were being worked out, this being the apparent views of the heads of the oil companies themselves as presented earlier to Mr. Humphrey, Mr. Wilson and myself. This, however, would require some cooperation from the attorneys for the oil companies. It was requested that Mr. Anderson would seek to bring about contact between the attorneys and the Attorney General on this subject and that Mr. Hoover as soon as he returned would be brought into the matter.

JOHN FOSTER DULLES.

JANUARY 13, 1954.

To: The files.

From: Stanley N. Barnes, Assistant Attorney General.

On Wednesday, January 13, 1954, Mr. Emmerglick and the writer conferred with the Attorney General relative to the proposed consortium agreement affecting Iranian oil. We explained our two major and three minor objections to the proposal as set forth in a memorandum for the Attorney General from the undersigned dated January 13, 1954 (Document No. 1), obtained his approval of the proposed form of opinion letter presently dated January 13, 1954 (Document No. 2) (to be signed only after the proposed consortium agreement is finally approved and the NSC approves the consortium agreement and requests the Attorney General's opinion). We pointed out to him that the two primary objections related to the possible use of the veto in the hands of AIOC, the British Government and the Iranian Government, and, secondly, the lack in the consortium agreement as proposed, of any freedom re: pricing and freedom of market.

We also submitted to the Attorney General document denominated "Memorandum to the National Security Council" dated January 13, 1954 (Document No. 3) relating to the production of records in the pending cartel case.

In the afternoon, I conferred with Herbert Hoover, Jr. and showed him documents No. 1, No. 2 and No. 3 above, giving him a copy of No. 1, only, pointing out that Document No. 2 was substantially the form of the opinion which the Attorney General could expect to give upon a finding of the necessary information by and at the request of the NSC, provided there had first been approval by this Department of the consortium agreement, including the free pricing and free marketing provisions, and (2) either elimination of the veto or the finalization of participants prior to approval.

Mr. Hoover stated that he thought everything with the possible exception of the elimination of the veto could be arranged, and that he did not think we should try to have the matter passed on at the National Security Council on Thursday, January 14th as Roger Kyes suggested it should be, but that the matter should go over a week, which would enable the Attorney General to attend. Mr. Hoover tried to call Mr. Kyes from my office to ask Kyes to postpone any consideration for such week.

Mr. Hoover plans to postpone his return to England for a week, to accommodate this National Security Council meeting. This would indicate that he does not intend to attempt to finalize the participation with Sir William Frazier prior to the NSC meeting, which leaves the veto question in the air.

Mr. Hoover, in discussing the matter with Roger Kyes, had discussed it with Secretary of the Treasury Humphrey, who had suggested that two things were missing in the consortium agreement: (1)

in paragraph IV the curtailment probability should be described as temporary, and (2) that there is no specification in the consortium agreement of a minimum quantity of oil or the minimum payment of money which Iran would probably require. I told him that my off-hand opinion was that we would have no objection to either minimum, nor to a designation of curtailment in other countries as "temporary."

MEMORANDUM FOR THE ATTORNEY GENERAL, JANUARY 13, 1954

We must express a general objection to the plan as presented. An approval is asked of an inchoate and uncertain proposal. Any opinion as to violation or non-violation of the antitrust laws could hardly be justified in the presence of such uncertainty.

(1) For example, the participants are uncertain. In paragraph III, subdivision (1), the composition of the participating American venture is subject to a final veto. This veto power existing in any one of two foreign governments and a foreign company results in a request to the Attorney General for approval of activities, the metes and bounds of which are incapable of ascertainment. This veto power could be exercised absolutely, or qualifiedly and indirectly through imposition of terms which might conflict with the antitrust laws. Not only indentity, but the nature and extent of participation is subject to complete control. Thus, for example, the veto would be withheld on condition that a particular company agree to market its acquisitions of petroleum or petroleum products in specified territories or pursuant to a pricing formula, or any one of a number of other restrictive practices, which would in fact impede foreign commerce of the United States.

We therefore prefer the elimination of such veto power. If that be impossible, then there must be complete disclosure of its full and final exercise, prior to any opinion.

(1a) In addition, we suggest that in paragraph III, subdivision (a) the language be changed to the following:

The group will consist of AIOC and such American and other oil companies as are qualified to contribute to a solution by providing capital and by agreeing to take Iranian oil and/or related products;

(2) The next principal objection is to the language in paragraph III, subdivision (2), third sentence.

While this paragraph purports to deal with disposition of petroleum and petroleum products, it fails to provide for freedom of each participating company individually to determine price and market. The third sentence permits a party to sell to another party, but is otherwise silent as to the essentials of price and market freedom, required under antitrust laws.

We suggest the following language in substitution: Each member of the group would be free to sell oil and products, at prices individually determined by it, to anyone, in any market including sale to any party, and provision would be made for adjustment by the group members of minor over and under liftings.

Mr. Hoover advises us that two errors should be corrected in the memorandum submitted to us.

First, in paragraph II, (c), the words "oil production" or "oil concession" should be inserted before "arrangements" in line one. This broad language, in our opinion, should be restricted, and we suggest that II (c) be made to read: (c) Not adversely affect existing oil pro-

duction concessions from Governments of oil producing foreign countries.

Secondly, in paragraph IV, 7th line, the word "control" should read "curtail."

In this same line, we suggest the addition after "agreement," and before "with," of the following language, after a comma: "understanding, or concert of action"

STANLEY N. BARNES,
Assistant Attorney General.

NOTE.—Pursuant to telephonic request from Mr. Herbert Hoover, Jr.'s secretary (Stephanie Chaconas), Assistant Attorney General Stanley N. Barnes, through the undersigned, authorized Mr. Hoover to reproduce three copies of this memorandum, to be distributed to the following:

Mr. Robert R. Bowie, of State Dept., whose symbol is "S/P," and which Miss Chaconas indicated means "Policy Planning Staff";

Secretary of the Navy Robert B. Anderson;

Herman Phleger, Esquire, Legal Adviser, State Department.

LUCILLE ROBEY.

MEMORANDUM TO THE NATIONAL SECURITY COUNCIL, JANUARY 13, 1954

The same considerations of national security which have prompted this proposed solution of the Iranian crisis and impel me to express an opinion of non-violation of the antitrust laws, require that this Government, and particularly the Department of Justice, be adequately informed as to the operations of our major oil companies in foreign production, refining, marketing and transportation of petroleum and petroleum products. When I ended grand jury proceedings and filed the pending cartel case I announced it to be investigatory in nature. A mechanism was created to facilitate investigation without hazard to the national security or the interests of our oil companies operating abroad by disclosures of information which might do harm. A committee of representatives of the Departments of State, Defense, the CIA, and the Department of Justice was created to screen all documents produced by the defendant companies under the provisions of the Federal Rules of Civil Procedure. Two Federal Judges have now considered the national security and prestige arguments advanced by the oil companies, and have rejected them after being informed of these safeguards. In the District of Columbia the court directed the defendant companies to produce even broader categories of documents than are now being sought by the Government in the civil proceeding. In the Southern District of New York the Judge, after hearing Mr. John W. Davis and other distinguished counsel on behalf of the defendant companies, indicated that the companies should commence to deliver documents to the Government responsive to its motions, without delay and without awaiting argument on the motions.

My purpose is to ascertain the facts and then, upon reviewing them with other responsible and interested departments, decide upon the future course of this litigation. But it is essential that we have all of the facts, for the integrity of governmental decisions at all levels depends upon the facts being in the possession of the Government. No hazard to national or company interests will result from disclosure of the facts to the primary guardian of the national security, the Government itself. We are not charging that any concession agreement between an oil company and a foreign sovereign is illegal, or violates the antitrust laws. We are not seeking to have any concession agreement produced in court or canceled. The relief for which the complaint prays is in general language, in accordance with the rules, but I have no hesitation in saying that we do not propose to ask for any relief as to concession agreements or for the dissolution of jointly-owned companies which hold concession agreements. Successful prosecution of this case, (if after ascertaining the facts it is decided to proceed with prosecution) will affect only illegal activities erected upon the concession agreements by the oil companies themselves. Such relief would not require that any concession agreement be characterized as an illegal act or altered in any of its terms.

For a year and a half the defendant companies have obstructed the production of documentary information, such production being a commonplace of antitrust law enforcement, and further obstruction will do a disservice to the manifold national security interests which dictate that this Government be fully informed on any matter so vital to national defense.

The motions for production of documents set up three major categories. By this time, on the basis of company admissions, every company should have fully completed, (with perhaps minor exceptions) the identification and segregation of the described documents in its files. More than a year ago the companies were directed by a court to begin the work of producing these categories of documents. It would seem to be reasonable and fair to expect the companies to deliver the documents described in the first paragraph of the motion (contracts and agreements for the most part) within thirty days, the documents described in the second paragraph of the motion (for the most part correspondence) in 120 days thereafter, and the documents described in the third paragraph of the motion (corporate minutes) within thirty days thereafter, thus extending the production over a period of six months and well into the summer recess of the present term of the United States District Court for the Southern District of New York. The necessary review of the documents and, in the light of the above, of the pending charges, can be expeditiously made in that interval. As a practical consequence, therefore, it would be at least eight months before any trial could be had by the Government on the basis of the documentary production.

——— ———,
Attorney General.

MEMORANDUM FOR ROBERT CUTLER, SPECIAL ASSISTANT TO THE PRESIDENT, JANUARY 15, 1954

This will confirm my advice to you, through Mr. Barnes, that he and Herbert Hoover, Jr. had agreed upon a modification of the draft provision of the Council action relating to the Iranian oil consortium, so that it would read as follows:

Agreed to advise the Attorney General that the security interests of the United States require the United States petroleum companies to participate in an international consortium to contract with the Government of Iran, within the area of the former AIOC concession, for the production and refining of petroleum and its purchase by them, in order to permit the reactivation of the said petroleum industry, and to provide therefrom to the friendly Government of Iran substantial revenues on terms which will protect the interests of the western world in the petroleum resources of the Middle East.

——— ———,
Attorney General.

JANUARY 15, 1954.

NATIONAL SECURITY COUNCIL,
Executive Office Building, Washington, D.C.
Attention: Mr. James S. Lay, Jr., Executive Secretary.

GENTLEMEN: You have asked my opinion as to the legality of an international consortium which might be arranged along the lines stated in paragraphs I to IV of the memorandum submitted to me, including the legality of participation therein by any or all of the five mentioned or other American oil companies.

Upon the assumption that the proposed consortium will be organized as set out in the memorandum submitted to me, will function upon the principles there detailed, and will be made up of participating companies in accordance with the specified composition of the group, and with particular emphasis upon the provisions reciting the freedom of each member of the group to sell the soil and products acquired by it freely, both as to price and purchaser, it is my opinion that such joint contract or joint company would not, in view of the facts and circumstances which now characterize the production and refining of Iranian oil and the determination by the National Security Council that the security interests of the United States require that United States oil companies be invited to participate in an international consortium to purchase petroleum and petroleum products from the Government of Iran, in itself constitute an unreasonable restraint of trade in violation of the antitrust laws, subject to the limitations stated below.

This opinion of non-violation is limited to the actions described in said memorandum and does not extend to any other act whatever, such as, but not limited to—

(a) Any other agreement or understanding among the participating parties, or any of them, or between any of the participating parties and non-participating persons,

(b) Marketing, distribution, further manufacture, or transportation of any petroleum or petroleum products, and any plan, program, agreement, or understanding, whether past, present or future, relating thereto.

This opinion of non-violation is given only subject to the express reservation of all rights of the United States, unlimited in any way by this opinion, to continue to prosecute the action against Standard Oil Company of New Jersey and others, pending in the United States District Court for the Southern District of New York, Civil No. 86–27, in accordance with the Federal Rules of Civil Procedure, and to prosecute the charges of such complaint with respect to the actions of the defendants therein and any other persons who may be asked as parties defendant, as to any petroleum and petroleum products, including petroleum and petroleum products acquired as a result of the consortium heretofore mentioned.

Sincerely yours,

——— ———,
Attorney General.

MEMORANDUM FOR THE ATTORNEY GENERAL, JANUARY 15, 1954

(No. 2—Supplementary to January 13, 1954 Memorandum)

Pursuant to your authority, my memorandum to you dated January 13, 1954 (our Document No. 1) was delivered to Mr. Hoover. At the same time we showed him your proposed opinion (our Document No. 2) and your proposed position on production of documents (our Document No. 3). Further conferences have taken place, with the following developments:

1. Mr. Hoover is not satisfied that some language cannot be worked out to prevent the possibility of unfortunate results by reason of the existence of the "veto right." Mr. Emmerglick and I are *not* convinced that any satisfactory formula can be worked out. However, in an effort to find an agreeable plan, we suggest the possibility of the following language in place of paragraph III, subdivision (1) of the Plan:

(1) *Composition of the Group.* The group will consist of AIOC and such other oil companies as are approved by the Governments of U.K. and Iran as being qualified to contribute to a solution by providing capital and by agreeing to take Iranian crude oil and refined products, with the proviso that more than five American companies will be approved to participate, and actually do participate, in the joint contract, (or organize a joint company), and that the powers of the U.K. and Iran to give or withhold approval will not be exercised to establish in advance of approval, or require as a condition of approval, with any American company, any conditions, agreements, undertakings or commitments which affect, or in any manner relate to, petroleum operations outside the AIOC concession area in Iran by such approved companies, or their affiliates, or to the marketing, transportation, refining or further manufacture of petroleum or petroleum products, to be acquired by any such company in the AIOC area in Iran. The relative participations by nationalities or companies cannot be foreseen at that time.

We should discuss policy and public relations questions involved in your approving a procedure enlarging the cartel group, with the possible effect of increasing imports of oil to the United States.

2. If the foregoing change in subdivision (1) of paragraph III of the proposal is made, there will be no need for the change set forth in subparagraph 1(a) of my memorandum to you of January 13, 1954. (Document No. 1.) If there *is* to be complete elimination of the veto power, then Mr. Hoover suggests the elimination of the word "or" in our suggested addition (paragraph 1(a) of our memorandum of January 13th) so that paragraph III, subsection (1) of the agreement will read—

(1) The group will consist of AIOC and such American and other companies as are qualified to contribute to a solution by providing capital, and by agreeing to take Iranian oil and refined products. The relative participations by nationalities or companies cannot be foreseen at this time.

3. Mr. Hoover approved the general idea suggested in paragraph II of our memorandum of January 13, 1954, but suggests that said proposed language be changed to add: "in any market," and delete the

word "minor" before "over and under liftings." We suggest the addition of the language, "by the provisions of the consortium," so paragraph II would read as follows:

> **By the provisions of the consortium, each member of the group would be free to sell oil and products at prices individually determined by it to any one *in any market*, including sale to any party, and provision would be made for adjustment in advance of any operations under the joint contract or joint company by the group members, of over and under liftings.**

4. Mr. Hoover sees no objection to the proposed revision of paragraph II, subsection (c), set forth on page 2 of our memorandum of January 13, 1954 (our Document No. 1).

5. Mr. Hoover objects to the words "concert of action" suggested as an addition under paragraph IV, 7th line (as set forth on page 2 of our memorandum of January 13, 1954 (our Document No. 1)), and we have suggested the word "combination" so that the language of said paragraph IV, line 7, would read—On an individual basis, without agreement, understanding, or combination with any other company.

STANLEY N. BARNES,
Assistant Attorney General.

MEMORANDUM FOR THE ATTORNEY GENERAL, JANUARY 19, 1954

(Document #5)

On January 18th I conferred further with Mr. Anderson, Secretary of the Navy, and Herbert Hoover, Jr.

Previously, Mr. Emmerglick and I had agreed to suggest the addition of the following words "By the provisions of the consortium", to precede paragraph II, which formerly began "Each member of the group will be free to sell oil," etc.

To this change no objection was made by Mr. Hoover and Mr. Anderson. They thereafter approved the language set forth in paragraph III of my memorandum to you of January 15, 1954 (Document #4), and the change suggested in paragraph 5 of that document. They had objection, however, to our proposed composition of the group (paragraph 1 of our Document #4). They pointed out that the Government of Iran might desire the companies to produce a different grade of gasoline, such as aviation gasoline, within the AIOC concession area before the product left Iran, which would affect the marketing and/or transportation, or perhaps even the refining outside of Iran. To meet that, we have suggested an addition to paragraph I of the plan, as follows: After the words "or their affiliates, or", insert the language: "except for provisions of Iranian law now or hereafter existing," and then continue on to the "marketing, transportation," etc.

When this was suggested to meet their objection relative to what Iran might do, they then pointed out that it did *not* meet their objection because the companies themselves might want to get together to decide what kind of refined products, or production, or further manufacturing they would perform. This we object to because your opinion so qualified would give them a blank check to do anything they wanted to in Iran.

Mr. Anderson suggested that we put a period after the word "affiliates," strike out the balance of our long first sentence in paragraph I, and add this sentence:

> Nothing in the foregoing paragraph shall be construed as limiting the participating companies' connections from entering into agreements or contracts so as to effectuate processes of production and manufacture (within the AIOC concession area in Iran), in keeping with ordinary and accepted practices in the petroleum industry.

We have suggested that the Anderson paragraph is objectionable, but that if it should be used it should certainly be limited to actions within the Iranian concession within quotes above. Our primary objection to the Anderson language is that it would permit the companies themselves, irrespective of any Iranian Government regulation or edict, to make their own restrictive agreements relative to market, price, or even production, at their pleasure.

My conversation with Mr. Anderson developed certain other information which you should have before you. I have already discussed

with you his suggestion that before any public announcement is made there should be a bi-partisan conference, which he did not think you should attend, but which would acquaint political leaders on both sides with what the Government was trying to do and why you were giving an opinion on the subject.

2. Mr. Anderson stated that you should know that at the original meeting between the oil company representatives and the Administration leaders, at which time Wilson, Humphrey, Phleger, Hoover (?) and Anderson were present. Mr. Humphrey started out by saying that this proposal had nothing to do with the cartel suit, that the Government was not going to rescue the oil companies from the cartel suit, and that this proposition must be kept separate and apart from the cartel suit. It is for this reason that Anderson believes that you would be in a difficult position if you insisted upon the production of documents in the cartel suit as a prerequisite to the opinion.

3. It was pointed out that all material relating to this transaction is now classified as TOP SECRET, and that it would have to be declassified before it could be shown to the oil companies.

4. Messrs. Anderson and Hoover questioned whether any additional action was necessary by the National Security Council. They want to avoid this in order to prevent delay. Mr. Hoover wants to leave this Friday, without fail, for London. Mr. Emmerglick and I believe that the very general language contained in the National Security Council Minutes, without reference to any proposed plan, is insufficient. We think that for the protection of the Department of Justice the plan as finally fixed should be presented to the National Security Council, and upon that specific plan a request should be made to you to give an opinion. The plan should be a part of the Minutes of the National Security Council, as should your ultimate opinion.

5. Mr. Hoover brought up the question as to whether or not the oil companies, in considering the plan as modified by the State Department and ourselves, could not meet for negotiations directly with the Department of Justice rather than through him as intermediary. He feels a lack of appreciation of the legal points which he believes render his actions as "office boy" inefficient.

STANLEY N. BARNES,
Assistant Attorney General.

EXECUTIVE OFFICE OF THE PRESIDENT,
NATIONAL SECURITY COUNCIL,
Washington, January 19, 1954.

Hon. ATTORNEY GENERAL,
Department of Justice,
Washington, D.C.

MY DEAR MR. ATTORNEY GENERAL: The National Security Council, the Secretary of the Treasury and the Director, Bureau of the Budget, at the 180th Council meeting on January 14, 1954 agreed to advise the Attorney General that the security interests of the United States require that United States petroleum companies participate in an international consortium to contract with the Government of Iran, within the area of the former A.I.O.C. concession, for the production, refining and acquisition of petroleum and petroleum products; in

order to permit the reactivation of the said petroleum industry and to provide therefrom to the friendly Government of Iran substantial revenues on terms which will protect the interests of the western world in the petroleum resources of the Middle East.

Noting that this action did not cover the sale of petroleum and petroleum products by the international consortium, the President subsequently approved the transmittal of this action to you.

The statement of the Council action set forth above revises and supersedes the statement of the action which was transmitted to you by letter of January 18, 1954.

Sincerely yours,

James S. Lay, Jr.,
Executive Secretary.

JANUARY 21, 1954.

The PRESIDENT,
The White House,
Washington, D.C.

MY DEAR MR. PRESIDENT: You have asked my opinion as to the legality of an international consortium which might be arranged along the lines stated in Paragraphs I to IV of the "Proposed Iranian Consortium Plan" submitted to me (copy of which is attached), including the legality of participation therein by any or all of the five mentioned or other American oil companies.

Upon the assumption that the proposed consortium will be organized as set out in the memorandum submitted to me, and will be made up of participating companies in accordance with the specified composition of the group, and with particular emphasis upon the provisions respecting the freedom of each member of the group to sell the oil and products acquired by it freely, both as to price and purchaser, it is my opinion that such joint contract or joint company, in view of the facts and circumstances which now characterize the production and refining of Iranian oil and the determination by the National Security Council that the security interests of the United States require that United States oil companies be invited to participate in an international consortium to contract with the Government of Iran, for the production, refining and acquisition of petroleum and petroleum products from within the area of the former AIOC concession, would not in itself constitute a violation of the antitrust laws, nor create a violation of antitrust law not already existing, subject to the limitations stated below.

This opinion of non-violation is limited to the actions described in said memorandum and does not extend to any other act whatever, such as, but not limited to—

(a) Any other agreement or understanding among the participating parties, or any of them, or between any of the participating parties and non-participating persons,

(b) Marketing, distribution, further manufacture, or transportation of any petroleum or petroleum products, and any plan, program, agreement, or understanding, whether past, present or future, relating thereto.

This opinion of non-violation is given only subject to the express reservation of all rights of the United States, unlimited in any way by this opinion, to continue to prosecute the action against Standard Oil Company of New Jersey and others, pending in the United States District Court for the Southern District of New York, Civil No. 86-27, in accordance with the Federal Rules of Civil Procedure, and to prosecute the charges of such complaint with respect to the actions of the defendants therein and any other persons who may be added as parties defendant, as to any petroleum and petroleum products, including any

and all actions dealing with petroleum and petroleum products acquired as a result of the consortium other than any action which the preceding paragraphs of this opinion state "would not in itself constitute a violation of the antitrust laws, nor creat a violation of antitrust law not already existing."

Respectfully,

——— ———,
Attorney General.

Executive Office of the President,
National Security Council,
Washington, January 25, 1954.

My Dear Mr. Attorney General: The following action by the National Security Council in which you participated with the Council. the Secretary of the Treasury and the Assistant Director, Bureau of the Budget, at the 181st Council meeting on January 21, 1954 (NSC Action No. 1021) is transmitted herewith for your information:

UNITED STATES POLICY TOWARD IRAN

(NSC 5402; NSC Action Nos. 1015 and 766–*a*)

a. Noted a memomandum entitled "A Proposed Iranian Consortium Plan" by the Department of State, as presented by Mr. Herbert Hoover, Jr.

b. Noted a statement emphasizing the importance to national defense of the above Plan from the viewpoint of the Department of Defense, as presented by the Chairman, Joint Chiefs of Staff.

c. Noted an opinion requested of the Attorney General as to the legality of the above Plan.

d. Noted that the President, upon the advice of the National Security Council contained in NSC Action No. 1015, authorizes and directs the Secretary of State, at an appropriate time, to inform:

(1) The appropriate American petroleum companies (a) of the advice of the National Secretary Council contained in NSC Action No. 1015; (b) of the contents of the proposed Iranian Consortium Plan; and (c) of the opinion of the Attorney General regarding this Plan.

(2) Such other persons, including appropriate members of Congress, and foreign governments as are appropriate, of this Plan.

e. Noted that the pending civil action in the so-called oil cartel case instituted pursuant to NSC Action No. 766-*a* is an entirely separate matter from the proposed Iranian Consortium Plan, and will continue to be prosecuted by the Department of Justice.

James S. Lay, Jr.,
Executive Secretary.

January 28, 1954.

Mr. R. G. Follis,
Chairman of the Board, Standard Oil Company of California,
San Francisco, Calif.

My Dear Mr. Follis: I have been requested by the President to inform you and other American petroleum companies which have

been conferring, accompanied by Mr. Herbert Hoover, Jr., Consultant to the Secretary, with the United Kingdom Government and certain foreign petroleum companies with a view toward securing a resumption of production of and movement of oil from Iran, of the conclusions of the United States Government respecting the arrangements which have been proposed by those conferees in order to accomplish this objective, from the standpoint of the security interests and the anti-trust laws of the United States.

The National Security Council has been considering the Iranian oil situation for some period of time. After consultations with the Secretaries of State and Defense and the Chairman, Joint Chiefs of Staff, the National Security Council has determined that it is in the security interests of the United States that United States petroleum companies participate in an international consortium to contract with the Government of Iran, within the area of the former concession of the Anglo-Iranian Oil Company, Ltd., for the production, refining, and acquisition of petroleum and petroleum products, in order to permit the reactivation of the petroleum industry in Iran and to provide to the friendly Government of Iran substantial revenues on terms which will protect the interests of the Western World in the petroleum resources of the Middle East.

This conclusion and a "Proposed Iranian Consortium Plan," which sets forth the result of the discussion between the American companies, the United Kingdom Government, and certain foreign companies, was submitted to the Attorney General for an opinion respecting the legality of the Proposed Plan, including the legality of participation therein by any or all of the American petroleum companies which have been conferring regarding it, or by other American petroleum companies. Copies of the Proposed Plan and of the Attorney General's opinion that the plan as outlined would not violate the anti-trust laws of the United States are enclosed.

It is requested that this letter and its enclosures remain confidential while negotiations are pending and until further advised by the Secretary of State.

Sincerely,

WALTER B. SMITH.

NOTE.—Aug. 25, 1954: Mr. Metzger, of State Dept., by telephone to the undersigned, gave authority for downgrading of this document from Top Secret to Confidential, based on letters to various oil companies (copies of which were forwarded to Judge Barnes by Herman Phleger under date of Jan. 29, 1954) from the State Department, signed by Under-Secretary Walter Bedell Smith as Acting Secretary, dated Jan. 28, 1954, to which copy of this document was attached; this downgrading necessary, Mr. Metzger said, for it to be sent private industry.

LUCILLE ROBEY,
Secretary to Assistant,
Attorney General Stanley Barnes.

"PROPOSED IRANIAN CONSORTIUM PLAN"

I. The British Government (herein referred to as H.M.G.) and the Anglo-Iranian Oil Company (herein referred to as AIOC) on the one hand and the Government of Iran on the other have been disputing the validity of the Iranian Government's action in purporting (a) to cancel

the oil concession agreement between that Government and AIOC; and (b) to nationalize certain properties of AIOC. The United States has long recognized that a settlement of that dispute which will provide for the reopening of the Iranian oil industry on a sound and permanent basis is vital to its national security. For this reason the United States has sought such a solution since the inception of the dispute early in 1951. (NSC Action Nos. 454, 473, 500, 680, 735, 875, 891, 947, 998 and 1015.)

II. Many, including American oil companies engaged in business at home or abroad, have felt that the best solution of the problem would be for AIOC to return to Iran alone but H.M.G., AIOC and the United States now agree that the Iranian attitude makes such a solution impossible. At the same time, H.M.G., AIOC and the United States also agree that it might be possible to organize a group of oil companies which, in turn, might be able to negotiate a sound and permanent settlement. The basic principles of any such settlement would:

(*a*) Permit a group of companies to negotiate a commercial contract with Iran;

(*b*) Provide compensation to AIOC for such interest it might not retain; and

(*c*) Not adversely affect existing oil production concessions from Governments of oil producing foreign countries.

III. Consummation of a settlement within the framework of these basic principles will be extremely difficult and the final terms cannot be foreseen. It is believed, however, that the following points will be handled, as indicated:

1. *Composition of the group.*—The group will consist of AIOC and such other oil companies as are approved by H.M.G. and the Government of Iran as being qualified to contribute to a solution by providing capital, and by agreeing to take Iranian crude oil and refined products, and otherwise, with the provisos:

(*a*) that approximately five American companies will be approved to participate, and actually do participate, in the joint contract (or organize a joint company), and

(*b*) that the powers of H.M.G. and Iran to give or withhold approval will not be exercised to establish in advance of approval, or require as a condition of approval, with any American company any conditions, agreements, undertakings or commitments which makes impossible compliance, in whole or part, with the provision of paragraph III 2(c) hereinbelow, or which affect, or in any manner relate to, petroleum operations (either with respect to Iranian petroleum or petroleum products, or petroleum or petroleum products of any other origin) outside the AIOC concession area in Iran by such approved companies, or their affiliates. The relative participation by nationalities or companies cannot be foreseen at this time.

2. *Form of organization.*—(*a*) The group would seek contractual arrangements with Iran within the framework of the basic principles and such arrangements might take the form of undivided interests in the contract or the organization of a new company to be the contracting party with Iran.

(*b*) In any case, the group would determine the total production and each member would take its proportion (based on capital contributions) of the Iranian crude oil and products.

(*c*) By the provisions of the consortium, each member of the group would be free to sell oil and products, at prices individually determined by it, to any one, in any market, including sale to any party.

(*d*) Provision would be made for adjustment of over-and-under liftings in advance of any operations under the joint contract or joint company by the group members.

3. *Arrangements with Iran.*—The contractual arrangements would give the group (however organized) effective management of the oil operations in and exports from the AIOC concession area in Iran. The group would agree to develop the property in accordance with sound commercial practices. This probably would mean, in practice, that the group would expand or contract production, transportation and refining in Iran as economic conditions indicated. All or part of the revenue to Iran would be derived by income taxation.

IV. While, as noted, the question of participations in the group has yet to be negotiated it is likely that some or all of the five American oil companies which are defendants in the civil suit commenced by the United States in April 1953 will be invited to participate. It is also likely that any American oil company (including but not limited to the five mentioned companies) which did participate would find it necessary to reduce temporarily (on an individual basis, without agreement, understanding, or combination with any other company) its present takings of crude oil and refined products from other sources in order to be able to absorb such Iranian oil as it might take.

V. The Secretary of State requests the National Security Council to obtain an opinion from the Attorney General as to the legality of any arrangements which might be made along the foregoing lines, including the legality of participation therein by any or all of the five mentioned American oil companies.

Memo to the Files by Stanley N. Barnes, Assistant Attorney General for Antitrust, February 16, 1954

Herbert Hoover, Jr. called me today and told me that while it was probably that Standard of California would go along with the consortium, Hillyer Brown, attorney for that company, was still very much opposed to any participation because of his understanding that Caltex could not market oil, that the other companies could market by selling individually, but that under the proposed plan permitting each company to sell individually there was no provision for selling jointly, and that Standard of California could not market any oil unless it sold jointly with Texas to Caltex. Mr. Hoover has talked directly with Mr. Follis, the president of Standard of California, who would like to have some words from us of clarification or interpretation. Herbert Hoover told Follis that he, of course, could give no such letter, and I told Herbert Hoover that I doubted if the Department of Justice would want to. It was concluded that we would each think the matter over, looking for a solution.

Standard Oil Company of California,
San Francisco, Calif., February 18, 1954.

Hon. Stanley N. Barnes,
Assistant Attorney General,
Department of Justice,
Washington, D.C.

Dear Judge Barnes: On January 28, 1954, the Secretary of State addressed a letter to a number of oil companies, including Standard Oil Company of California (Socal) and The Texas Company (Texas), stating that it was in the national security interest for American oil companies to join in a consortium to reopen the Iranian oil industry. There was enclosed with this letter a "Proposed Iranian Consortium Plan" and a copy of an opinion of the Attorney General respecting the legality of the plan.

As you know, Socal and Texas intend to sell any Iranian oil they acquire to their jointly owned subsidiary Caltex for resale to the public.

The question arises whether these sales at prices determined by Caltex are in conflict with Paragraph III 2(c) of the Plan which reads:

"By the provisions of the consortium, each member of the group would be free to sell oil and products, at prices individually determined by it, to anyone, in any market, including sale to any party."

To this question you and Mr. Emmerglick replied in the negative at the January 20th meeting in your office. According to my recollection you said that you reserved the right to attack Caltex in the cartel suit as an instrument in an alleged international cartel composed of Socal, Texas, and others but that both Socal and Texas could deal with the Iranian production as contemplated without changing the

Attorney General's views as to the validity of the consortium so long as there is nothing in the agreement or any legislation creating the consortium which restricts the freedom of any member to market "at prices individually determined by it, to anyone, in any market".

Mr. Herbert Hoover, Jr., telephoned us yesterday and told us that he had discussed this question with you and he felt that everyone involved had the same understanding of the paragraph. As he put it on the telephone, the paragraph should be interpreted as though it read:

"No provision of the consortium would prevent any member of the group from being free to sell oil and products, at prices individually determined by it, to anyone, in any market, including sale to any party."

Mr. Hoover suggested if we were still concerned about the matter that we write you a letter requesting confirmation of our understanding of this paragraph. If our understanding is not correct, our company being prevented from using its only available outlet for this oil, could not become a member of the consortium. In view of the fundamental importance of this matter, we would greatly appreciate your advising us of your views.

As this letter quotes Mr. Hoover we are sending him a copy.

Yours very truly,

HILLYER BROWN.

MARCH 1, 1954.

Mr. HILLYER BROWN,
Director and Vice President, Standard Oil Co. of California,
San Francisco, Calif.

DEAR MR. BROWN: I have your letter of February 18, requesting my interpretation of language contained in the "Proposed Iranian Consortium Plan", as applied, with an accompanying opinion of the Attorney General, to specified intentions of Standard Oil Company of California, and inferentially of The Texas Company, in connection therewith.

In view of (1) the nature of those documents, (2) their relationship to matters which involve not only interests of the United States but also of foreign governments, and (3) the joined responsibilities of a number of agencies of our Government in the premises, I believe it to be inappropriate and undesirable for this Department to give an interpretation of any language used in them. Therefore, I must decline your request.

In the fourth paragraph of your letter you undertake, I am sure in good faith, to reconstruct a conversation in my office with Mr. Emmerglick and myself, on January 20th. This is not wholly accurate, but in view of the position indicated above, I do not wish to do more than to record this fact.

Sincerely yours,

STANLEY N. BARNES,
Assistant Attorney General.

[Incoming Telegram—Department of State]

From: London.
To: Secretary of State.
No: 4241, March 30, 7 p.m.

1. During discussion between United States company principals and Fraser March 29, it tentatively agreed United States independents would be invited enter consortium. We much relieved this matter apparently setttled in principle at company level without necessity applying government pressure.

2. Proposed agreement would be along following lines:

A. Immediately following negotiations in Iran, if successfully concluded and formally approved by Iranian Government, invitation will be made to group United States independent companies participate in consortium.

B. Reasonable time limit will be placed on acceptance and group must participate as single unit.

C. Participants must be acceptable to both HMG and Iranian Government but method of choosing not yet worked out. United States major companies do not wish undertake responsibility.

D. Each of five major United States participants who are in effect underwriting deal would relinquish 1% of respective holdings, mak-

ing total of 5% available for independents and reducing interest of initial United States members to 7% each. Purchase of interest would be on basis of cost.

E. No further transfers of consortium interest, other than transaction contemplated herein, would be permitted for 5 years following formation of organization.

3. Following points are believed to have important bearing on above proposal:

A. Participation of 5% would require offtake approximating 30,000 barrels daily of which from 50 to 66% would be in refined products. Refining costs probably high due necessity supporting 30,000 employees and attendant expenses. Penalties for underlifting both prodcuts and crude are most severe to protect minimum guarantees probably required by Iranian Government.

B. Desirable entire matter be kept most confidential as much pressure being applied to HMG by many foreign governments on behalf their nationals for participation.

C. Aggressive approach by individual independents to HMG or AIOC at this time not advisable and would probably have ultimately adverse effect on individual interest.

4. Following questions must be raised and answered within next day or so, and Department's views urgently requested:

A. Is 5% interest in consortium sufficient participation for independent group? This represents eighth of total U.S. share. It my belief most difficult obtain larger portion at this time from HMG and AIOC, but will endeavor to do so if Department is concerned on this point.

B. Who should issue invitations and what arrangements should be made for handling matter? It my view that HMG or AIOC should have largest possible degree responsibility that we can get them to assume.

C. If HMG and AIOC refuse issue inviations to certain companies, and those same companies protest to U.S. Government, what action should we take? It my preliminary opinion that we can call matter to attention of HMG, but we should not be placed in position of favoring one company over another.

D. Should invitation in effect be broadcast, or should restricted number of companies be specifically invited? If HMG issues invitations to several responsible companies and they all decline, should matter be pursued further? This problem seems to me need not be answered immediately.

E. What if any publicity should be given to matter? It my recommendation no release be given until possibility of deal in Iran becomes actuality. If responsible companies make inquiry re matter, Department might state that, if negotiations in Iran prove successful, it is assumed that HMG and/or AIOC will accede to our request that other United States companies would be invited to participate if they prepared to undertake full share of responsibilities. Details of agreement unknown until firm agreement has been negotiated with Iran.

5. Suggest Department pass to Attorney General, Secretary Humphries and Secretary Anderson for their comments, with notation I probably leaving London for Tehran early April 2.

ALDRICH.

NOTE.—Mr. Stutesman (NEA) notified 6:50 pm 3/30/54 JAW.

[Incoming Telegram—Department of State]

From: Tehran.
To: Secretary of State.
No: 2134, April 15, 3 p.m. (Section one to two).

Following memorandum read by consortium representatives to Iranian representatives at first formal negotiating session April 14. Copy loaned to Amini on temporary basis with understanding it not become part of permanent minutes.

Verbatim text follows:

1. We appreciate importance reaching arrangements which would result in resumption of flow of Iranian oil into world's markets in substantial quantities.

2. We also appreciate important doing this in manner which would meet aspirations of Iran.

In particular we would recognize government's ownership of oil in ground and of producing and refining facilities.

3. We hope that for their part Iran will appreciate importance which consortum attach to point that arrangements need also to be satisfactory to consortium from commercial standpoint.

4. However, it not simple thing to meet both commercial needs of consortium and aspirations of Iran. We have not therefore, prepared detailed proposal at this time but wish first to outline as basis for discussion some of more important features of what we have in mind.

5. As result of goodwill established over many years and investment of huge sums of money in distributing facilities the members of consortium enjoy very large marketing positions in western hemisphere. Nevertheless it will not be easy matter to establish flow of Iranian oil in large quantities.

6. Crude oil formerly drawn from Iran has been replaced by plentiful supplies of crude oil from other sources. Refining capacity once utilized at Abadan has been supplanted by new refining capacity in other parts of the Eastern hemisphere. To an increasingly great extent governments of countries in which oil products are consumed have required and are still requiring companies to erect refineries in their countries.

7. Despite these difficulties would be hope of consortium to arrive at rate of production of Iranian crude (for export as such and for refining) of 30 million tons a year by end of first 3 years of operations.

8. Operation of refinery present seven greater problems and consortium does not expect to be able reach throughout rate of more than 12.5 million tons a year by end of second year of operations. Even this will, of course, depend greatly upon available markets.

9. Actual production and refinery programs for which consortium would strive during the first three years would be:

(A) A total crude program (including crude for refining). In first year 10 MT, in second year 20 MT, in third year 25 MT.

(B) A refining program. In first year 6.5 MT, in second year 10 MT, in third year 12.5 MT.

HENDERSON.

[Incoming Telegram—Department of State]

From: Tehran.
To: Secretary of State.
No.: 2134, April 15, 3 p.m. (Section two of two).

10. Consortium members feel that if they are to provide large scale outlet for Iranian oil there would need be suitable type of agreement between them and Iranian Government which would make Iranian oil available on terms and conditions competitive with those prevailing in other Middle East countries. They believe that best method of doing this would be for consortium members to be granted for their own account certain rights and powers in respect of producing and refining operations, including, amongst other things, exclusive right to explore for, drill for, produce and refine and right to transport and export, oil and gas, together with right of effective control any management of these operations. It is hoped that a way can be found whereby such an agreement could be made within principles of nationalization.

11. It has been assumed that government would not wish to have the consortium participate in internal distribution or in operations of Kermanshah refinery of Maft-I-Shah field. Hence these operations are not included in the plans consortium has in mind which, in other respects, would cover the same area as AIOC 1933 agreement.

12. Duration of agreement should be comparable with duration of arrangements in other Persian Gulf countries in order make it competitive. Expiration dates in more important cases are:

(A) Iraq—Basra Petroleum Co. 30 November 1995; Iraq Petroleum Co. 14 March 2000; Mosul Petroleum Co. 25 May 2007.

(B) Saudi Arabia—original area 14 July 1999; additional area 14 July 2005.

(C) Kuwait—23 December 2026.

13. Under plan consortium has in mind, Iranian Government and consortium would share equally in profit on the total volume of crude delivered aboard ship for export and that delivered to Abadan Refinery for processing. This profit would be difference between costs of crude thus delivered and a value for that crude which would be related to crude oil selling prices. Payment of Iranian Government's share of profit would be made to it by combination of payment per ton and payment of Iranian income tax, mainly latter. All such payments would be in sterling.

14. As regards refinery, crude oil delivered to it would be included, as stated above, in profit sharing plan. In addition there would be a processing fee on which Iranian income tax would be payable. In this way consortium is convinced, Iran would receive its fair and proper share of profits attributable to producing and refining activities in Iran, taken as whole, on basis consistent with that existing in other Middle East oil producing countries.

15. Ownership of existing facilities to be used by consortium in Iran would be in government but these facilities would be leased to consortium members. A percentage of value of such facilities would

be included by consortium in its annual operating cost. New facilities required in future would be financed by consortium and would immediately become property of the government and be leased to consortium members. A percentage of cost of such new facilities would likewise be included in annual operating costs.

End verbatim text.

HENDERSON.

Memorandum for the Attorney General From Stanley N. Barnes, Assistant Attorney General for Antitrust, April 29, 1954

On April 29, 1954, I attended, in accordance with your instructions, the meeting of the National Security Council.

1. The interim report on U.S. Rubber Policy (NSC 5417) was discussed. Bedell Smith suggested (a) the insertion of the word "sympathetic" before "willingness" in 2a, page 1, referring to the United States position at Ceylon, (b) the insertion of the word "precise" before "commitment" in the same paragraph, line 5, and the elimination of the word "precise" in the same line and paragraph where it thereafter occurs.

Mr. Kyes suggested that the present use of synthetic and natural rubber by tire makers was 50–50. During the war, it got down as low as 20% natural and 80% synthetic, without appreciable effect on quality. By means of improved techniques, it can now be reduced in truck tires, and is in some instances 13% natural, 87% synthetic. Mr. Kyes suggested that a change in the mix from 50–50 to 55 natural and 45 synthetic would quickly eliminate the 70,000 tons being held off the market (paragraph 7, page 5). And the President computed that this 5% change, based on present use, would eliminate the "overhang" in about a year. Mr. Robbins, representing RFC, pointed out that under the Rubber Plant Disposal Program it was essential, in his opinion, that the plants be kept in operation and not be put in standby position. At the present time, one plant is in standby condition, and all others are operating only on a one-line production basis, and that a reduction from 50% to 45% of synthetic rubber in the tire mix would mean almost a decrease of 10% in use of synthetic, which would mean either closing up a rubber plant to a standby position, or a gap operation in one or more of the presently operating plants. He felt that either result would discourage plant buyers and depress possible realizable purchase prices.

Mr. Flemming suggested the possibility of ODM increasing the stockpile purchase if the mix were changed.

Mr. Cutler then suggested that two areas for exploration be added as (e) and (f) to paragraph 4, page 2, of the recommendation, namely, that a committee of experts be set up not only to cover (a) to (d) of paragraph 4, but to consider (e) feasibility of use of more natural rubber in the tire mix, and feasibility of increase in the stockpile.

As above modified, the interim statement of U.S. Rubber Policy was affirmed.

2. The second matter discussed was the Progress Report on U.S. Policy Toward Iran (NSC 5402). Mr. Cutler made the summary, bringing the Council up to date, commenting on the Attorney General's opinion rendered in January, and Bedell Smith spoke at some length, indicating that Ambassador Henderson and Mr. Hoover thought we should not be too pessimistic about the possibilities of suc-

cess, while Mr. Tex Reiber, representing the Iranian Government, had left Iran and had told the State Department not to be too optimistic about the possibilities of successfully concluding the deal. Bedell Smith stated that it would be necessary for the United States to forcefully point out to the Iranian Government that they were taking a long time on the negotiations, but it was not on their time but our time, because of the funds we are giving them, or loaning them, to maintain their Government. He also thought it would be necessary for the United States to put some pressure on the oil companies (particularly on the American oil companies, and indirectly upon the Shell and French oil companies) because of their strongly expressed attitude that they wanted a concession with absolute terms, which the Iranians characterized as no better than the previous British concession, and which was "horrifying" to the King, although not so vigorously opposed by Zahedi, the Prime Minister.

The Progress Report was approved; the only change recommended by the OCB was that paragraph 15c of NSC 5402 be changed so that the date reads June 1, 1954 rather than April 1, 1954. This is the date for reassessment of the problem on the assumption that the consortium plan will by that time either have been approved or rejected.

3. On the matter of Internal Security, the previous recommendation 873(d) ?, which I understand requested Arthur Flemming to set up a plan, is modified to request the Attorney General to present the plan, with the cooperation of the other Departments of Government, looking toward an improved organization of the Government respecting internal security. Mr. Cutler stated he would forward to you an official copy of the action taken under this Item 3.

STANLEY N. BARNES,
Assistant Attorney General.

Memo to Stanley N. Barnes, Assistant Attorney General, From Leonard J. Emmerglick: August 19, 1954

Examination of the documents sent over by Mr. Hoover respecting the proposed Iranian arrangements discloses that the plan goes beyond the premises upon which the Attorney General's opinion delivered to the National Security Council was based. Those premises were that the Consortium would buy oil from Iran which the individual members would be free to sell by individual decisions as to price, markets and customers. The plan as it has now evolved has the individual members in a joint operation for the exploration, production, refining and acquisition of Iranian oil.

The documents do indeed create a paper freedom to market the oil and products without restriction. Nothing in the papers before it shows that petroleum, when off-taken by each Consortium member, will be marketed through the cartel mechanism or in the same pattern as the marketing which we have under attack in our case. But when we are asked for our approval, and to give something like a railroad release letter, then it is not enough for us to have a statement in the documents that each participating company will be free to dispose of its oil as to price and markets. In any railroad release application the first thing that we would ask would be: "how do you propose to use your freedom and to dispose of this oil?" If we had a suit pending against the applicant we would beyond any doubt certainly ask this kind of question, and would not give a railroad release letter unless it was shown that the company was setting up a program for marketing in a new and different method.

Here we know, in fact we charge in our pending complaint, that Consortium members control world marketing and market pursuant to "As is" arrangements designed to prevent competition. We cannot of course disregard such knowledge and such a charge pending in the courts in our consideration of this kind of railroad release application. Unless the papers show a new marketing program or mechanism we cannot disregard our own charges that the cartel members control marketing in a cartel way.

If in a different case we should be fully satisfied from all of the papers that something is about to be set in motion which will not constitute a violation of law and which we would not want to attack as a violation of law, we would probably issue of railroad release letter stating that we would not bring criminal proceedings.

The request, therefore, that we give some kind of explicit approval presents these very great difficulties.

In the past problems of this kind appear to have been handled with a larger measure of conservatism and I am troubled by the fact that such an approval as is looked for when the final drafts are before us, could not properly be described as conservative action by the Department.

It may be that the draft agreement between the members of the Consortium will disclose that a method of marketing is going to be pursued which departs clearly from the demonstrated concert of action being employed by these same companies elsewhere in the world. If that should be made manifest then I think that we would be left with only the question: Is it good practice for the Attorney General to give an unlimited commitment not to prosecute to companies against whom a cognate law suit is pending?

To sum up: (1) I think that a desire for the approval of the Attorney General puts us under the necessity to have all of the facts. (2) If we get all of the facts I feel, from what we have heard, at least, that they will show the companies propose to market the oil through no new mechanisms and in no different manner than is their practice under the existing system of cartel operations. (3) Approval on our part may seem to a court to amount to an act which is incompatible with the claim that the marketing activities attacked in our complaint are unlawful and require remedial action, or the court might conclude that the approval was mistakenly given.

Of course, the fact must be faced up to just as squarely that if we are able to retain a position in which we do not approve, the utility of that position will be simply that we can attack this set of arrangements in one of two ways, either as being wholly a departure from the Attorney General's opinion delivered to the National Security Council, or as being, with respect to marketing, not covered by that opinion. It must be contemplated that the freedom that we will thus enjoy will have to be used to claim at least that oil from Iran in the hands of the defendants is being marketed under cartel arrangements, since no new ones were erected to replace them. We will be attacking the use made of the Iranian arrangements.

As far as I am able to tell we have never given any indication that we would pass upon the final papers for the purpose of approval or disapproval, except with specific emphasis that we would approve that only which would squarely come within the four corners of the proposed Iranian Consortium plan. In our letter of April 6 to Mr. Byroade we called attention to the fact that any comments on our part beyond the Attorney General's opinion to the National Security Council must be considered on this basis:

"Any reaction of this Department to other matters or developments must be considered as contemplating that only that which is in the four corners of the proposed Iranian Consortium plan will receive our approval."

We concluded the letter to Mr. Byroade with the following sentence: "We will need the full presentation of all relevant facts if further action on our part is to be considered."

Memo to Stanley N. Barnes, Assistant Attorney General, From Kenneth R. Harkins, September 15, 1954

Pursuant to your instructions yesterday I have prepared a letter for the signature of the Attorney General approving the arrangements delineated in the fourteen documents submitted to you by the participants in the proposed Iranian consortium. As I stated yesterday I do not believe that these arrangements substantially depart from the plan approved by the Attorney General in his January 21, 1954 letter.

It seems to me that the question now presented, however, is not whether these arrangements deviate from that plan but rather whether these arrangements substantially depart from the arrangements under attack in our cartel suit. If these arrangements are in fact but an extension of the cartel, it seems to me that the expressions of the Attorney General in January, the findings of the National Security Council as to the security interest of the United States, and the desires of the State Department, are irrelevant to any consideration of the narrow legal issue of whether these arrangements disclose a violation of the antitrust laws which after all is what is now requested in an opinion from the Attorney General.

I have searched the documents diligently for indication wherein these arrangements differ from the arrangements attacked in the cartel suit. I have found no significant deviation but on the contrary have found many indications which lead me to believe that these arrangements manifest a continuation of the cartel pattern. In the light of the information we have in the cartel case, I do not believe that we can properly assume that the participants will market this oil in a lawful manner.

In view of this, I do not see how the Attorney General can approve these arrangements consistently with the position he has taken in the cartel suit. Therefore, I cannot recommend that the Attorney General sign a letter which states that these arrangements "do not constitute a violation of the antitrust laws nor create a violation of antitrust law not already existing."

I discussed this memo with the Attorney General today—he stated that he felt that he had already crossed this bridge on January 20, but that he agreed that approval of the consortium was inconsistent with the cartel case as the complaint is drawn and that necessarily the case must proceed with emphasis on the marketing aspects and not on the production control aspects. I told the Attorney General that I was not in a position to say that we could not proceed with the case on the marketing angle if he signed the letter.

Memo to Stanley N. Barnes, Assistant Attorney General, From Leonard J. Emmerglick, September 15, 1954

This memorandum is being dictated from Bedford, Pennsylvania, where the final drafts of the consortium papers were sent to me last night by messenger.

The drafts do not indicate a substantial deviation from the proposed Iranian consortium plan with respect to which the Attorney General gave his opinion to the National Security Council some months ago.

An agreement or agreements may be illegal, as in violation of the antitrust law, either because of their structure, or because of the use to which they are put. Structurally this group of integrated agreements does not appear to present an illegal per se violation. Nor can I say, in view of the national security factors present, as disclosed by the National Security Council's files made available to us, that structurally these agreements show unreasonable restraint of trade.

But we cannot now assume that these agreements will be put to only lawful use. When we gave our last opinion it was at the opening of negotiations and before anything like a detailed plan was available. Now we have a most detailed specific plan of action right up to the point where the petroleum is to be marketed. If there were no other facts than these the question would be presented whether we could assume that marketing operations as planned by the parties would be legal, or whether, a failure to insist upon a specific detailed statement of our marketing would be conducted would be tantamount to keeping ourselves consciously in ignorance. Neither of these questions is presented, however, for there is an additional fact of controlling significance. That fact is that we now have pending in Court a charge made by the Government that world marketing of petroleum and its products outside the United States is controlled by the United States companies which are participants and that an illegal cartel pattern has been impressed upon the paths of trade in petroleum and its products. Because we are in the course of enforcing the antitrust laws on such a charge we cannot assume that marketing activities under this body of agreements will be legal.

The fact that no marketing plans are disclosed, although the parties have been able to work out everything else in great detail, tends to confirm the conclusion that nothing new or different has been devised, as a system of marketing which will depart from the cartel pattern.

It seems to me that the Attorney General would have to stultify himself to give an opinion that these agreements would be lawful. Congress anticipated that needs of the national security might create just such a situation, and it undertook to relieve the Attorney General of the necessity of doing this kind of thing. In Section 708 of the Defense Production Act provision is made for a method by which this kind of arrangement can be approved and given immunity from

prosecution under the antitrust laws. I think that resort should be had to the legislation created for occasions like this. In saying this I realize that the grant of immunity may work against the successful maintenance of the pending cartel case in New York. But if that is so, it presents something other than a legal question which, of course, will have to be decided as a matter of policy.

I am planning, as you suggested, to talk to the Attorney General later this morning on the phone.

SEPTEMBER 15, 1954.

THE PRESIDENT,
The White House,
Washington 25, D.C.

MY DEAR MR. PRESIDENT: As a result of negotiations conducted by the international oil companies participating in the proposed Iranian consortium, there have been submitted to me by the participants drafts of fourteen documents which, I understand, are in final form for execution by the parties. Pursuant to your request for my opinion, I have examined these documents to ascertain the legality of the arrangements set forth, including the legality of participation therein by any or all of the five mentioned or other American oil companies.

On the basis of my review of these documents it is my view that the arrangements set forth therein do not deviate substantially from the arrangements stated in the "Proposed Iranian Consortium Plan" with respect to which I gave you an opinion on January 21, 1954. Accordingly, it is my opinion that these agreements, in their present form and if they remain unaltered, in view of the facts and circumstances which now characterize the production and refining of Iranian oil and the determination by the National Security Council that the security interests of the United States require that United States oil companies be invited to participate in an international consortium to contract with the Government of Iran, for the production, refining and acquisition of petroleum and petroleum products from within the area of Iran defined in these documents, would not in themselves constitute a violation of the antitrust laws, nor create a violation of antitrust law not already existing, subject to the limitations stated below.

This opinion of non-violation is limited to the arrangements described in the documents which have been submitted by the oil company participants and does not extend to any other act whatever, such, as but not limited to—

(*a*) Any other agreement or understanding among the participating parties, or any of them, or between any of the participating parties and nonparticipating persons,

(*b*) Marketing, distribution, further manufacture, or transportation of any petroleum or petroleum products, and any plan, program, agreement, or understanding, whether past, present or future, relating thereto.

This opinion of non-violation is given only subject to the express reservation of all rights of the United States, unlimited in any way by this opinion, to continue to prosecute the action against Standard Oil Company of New Jersey and others, pending in the United States District Court for the Southern District of New York, Civil No.

86–27, in accordance with the Federal Rules of Civil Procedure, and to prosecute the charges of such complaint with respect to the actions of the defendants therein and any other persons who may be added as parties defendant, as to any petroleum and petroleum products, including any and all actions dealing with petroleum and petroleum products acquired as a result of the consortium other than any actions which the preceding paragraphs of this opinion state "would not in themselves constitute a violation of the antitrust laws, nor create a violation of antitrust law not already existing."

Respectfully,

——— ———,
Attorney General.

PARTICIPANTS' AGREEMENT BETWEEN ANGLO-IRANIAN OIL CO. LIMITED, N.V. DE BATAAFSCHE PETROLEUM MAATSCHAPPIJ, STANDARD OIL CO. (NEW JERSEY), STANDARD OIL CO. OF CALIFORNIA, THE TEXAS CO., SOCONY-VACUUM OIL CO. INC., GULF OIL CORP., COMPAGNIE FRANCAISE DES PETROLES

This Agreement is made the ------ day of ------------ 1954 Between Anglo-Iranian Oil Company, Limited of Britannic House Finsbury Circus in the City of London of the first part N.V. De Bataafsche Petroleum Maatschappij of 30 Carel van Bylandtlaan The Hague The Netherlands of the second part Standard Oil Company (New Jersey) of 30 Rockefeller Plaza New York of the third part Standard Oil Company of California of 225 Bush Street San Francisco of the fourth part The Texas Company of 135 East Forty-second Street New York of the fifth part Socony-Vacuum Oil Company, Incorporated of 26 Broadway New York of the sixth part Gulf Oil Corporation of Gulf Buildings Pittsburgh Pennsylvania of the seventh part and Compagnie Francaise des Petroles of 11 Rue du Docteur Lancereaux Paris France of the eighth part.

Whereas:

(a) The parties hereto have entered into an Agreement (a copy of which is annexed hereto marked "A") with Iran acting through the Imperial Government of Iran and the National Iranian Oil Company.

(b) The parties hereto desire to implement the said Agreement and to establish the regulation of their several rights and obligations thereunder and otherwise to determine their mutual relations in connection therewith.

(c) The parties hereto and Oil Trading (Iran) Limited will contemporaneously with this Agreement enter into a further Agreement in the form annexed hereto marked "B".

Now this agreement witnesseth as follows:

PART I.—DEFINITIONS

1. In this Agreement the following words and expressions shall (unless the context otherwise requires) have the following meanings:—

"Government Agreement" means the Agreement recited in (a) above.

"A.I.O.C. Agreement" means the Agreement recited in (c) above.

"Participants" means the parties hereto and any person to whom a transfer of Participation Interest is made under the provisions hereinafter contained.

"Share Percentage" means in relation to any Participant the proportion in terms of a percentage which the number of shares in the Holding Company held by it bears to the total number of the issued shares thereof.

"Participation Interest" shall mean in relation to any Participant

its scoring capital as calculated in accordance with Clause 17(b) and in addition thereto shall include the right, title and interest of the Participant in, to and under the Government Agreement, this Agreement and the A.I.O.C. Agreement subject to the obligations of the Participant thereunder.

"N.I.O.C." means the National Iranian Oil Company.

"Holding Company" means [the Company to be formed under clause (2)(a)(i) hereof] [or "Iranian Oil Participants Limited" if already formed.]

"Services Company" means [the Company to be formed under Clause 2(a)(ii) hereof] [or "Iranian Oil Services Limited" if already formed.]

"Exploration and Producing Company" means the Iraanse Aardolie Exploratie en Productie Maatschappij (Iranian Oil Exploration and Producing Company) N.V.

"Refining Company" means the Iraanse Aardolie Raffinage Maatschappij (Iranian Oil Refining Company) N.V.

"Operating Companies" means the Exploration and Producing Company and the Refining Company.

"Trading Companies" shall have the meaning set forth in Article 18 of the Government Agreement.

"Crude oil" means crude petroleum, asphalt (except asphalt from deposits being worked by persons other than N.I.O.C. on or before the effective date) and all liquid hydrocarbons in their natural state or obtained by condensation or extraction from natural gas. When crude oil is processed otherwise than at refinery and a part thereof is put back into the crude oil stream, "crude oil" shall include the part so put back.

"Petroleum product" means any finished or semi-finished product derived from crude oil by condensation, refining, chemical treatment or any other method or process, whether now known or not.

"Natural gas" means wet gas, dry gas, all other gaseous hydrocarbons through oil or gas wells and the residue gas remaining after the extraction of liquid hydrocarbons from such wet gas.

"Refinery" means the Adaban refinery, and any other refinery or refineries which may be built by the Refining Company within the Area, as defined by the Government Agreement, together with all facilities, equipment and appurtenances.

"Internal consumption in Iran" means the consumption in Iran of the product or substance concerned, in contrast to its export from Iran, but for the purpose of this definition shall not include consumption in Iran by the Operating Companies.

"Posted price" of Iranian crude oil means:

(1) in the case of crude oil loaded on board tankship for export from Iran the price f.o.b. tankship at seaboard terminal, being the price at which crude oil of equivalent quality and gravity is offered for sale by a Trading Company or its affiliate to buyers generally for delivery under similar conditions and at the same seaboard terminal, and

(2) in the case of crude oil delivered to refinery the price of crude oil of equivalent quality and gravity offered for sale as above f.o.b. tankship at refinery port less such an amount (not

exceeding 8d. per cubic metre) as may fairly and reasonably be attributed to the loading charge of crude oil at such refinery port.

"Applicable posted price" means, in relation to any Iranian crude oil, the individual posted price of the particular Trading Company or its affiliate for such crude oil as of the date of export or delivery to refinery, as the case may be.

"affiliate", in relation to a Participant, means any corporation:

(1) Which owns 50 per cent, or more of the voting shares of that Participant, or

(2) 50 per cent or more of the voting shares of which are owned by either the Participant, or a Parent company of the Participant, or either of them together with one or more additional persons each of which is a Participant or Parent company.

"Parent company", as used in the preceding definition, means a corporation or corporations which own all the voting shares of a Participant: and "own", as used in this and the preceding definition, means beneficially own directly or through one or more other corporations.

"Person" means natural or juridical person, and includes partnership, firm, company, unincorporated association and corporation.

"Cubic metre" in relation to crude oil or petroleum products means one cubic metre at sixty degrees Fahrenheit and at normal atmospheric pressure.

"Effective date" means the date on which the Government Agreement comes into force under Article 51 thereof.

"Year" means a calendar year beginning 1st January, "month" means a calendar month and "quarter" means a period of three months beginning 1st January, 1st April, 1st July, or 1st October.

Part II.—Corporate Structure

2. The Participants shall:

[(a) Cause to be incorporated in England:

(i) the Holding Company with a Memorandum and Articles of Association in the form annexed and marked "C" or in such form as may be unanimously agreed by the Participants;

(ii) the Services Company with a Memorandum and Articles of Association in the form annexed and marked "D" or in such form as may be unanimously agreed by the Participants;]

Note.—Sub-paragraph (a) will be deleted if by the execution of this Agreement, the two companies are already formed.

(b) Procure that:

(i) the Holding Company shall beneficially acquire all the issued share capital of the Operating Companies;

(ii) the head offices of the Holding Company and the Services Company shall be at all times in London;

(iii) the Services Company and the Operating Companies shall enter into Service Agreements in the form annexed and marked "E" and "F" respectively;

(c) subscribe in cash at par for 500,000 shares of £1 each in the initial capital of the Holding Company and 10,000 shares of £1 each in the initial capital of the Services Company in each case in the following proportions:

	Percent
Anglo-Iranian Oil Co., Ltd	40
N.V. De Bataafsche Petroleum Maatschappij	14
Standard Oil Co. (New Jersey)	8
Standard Oil Co. of California	8
The Texas Co	8
Socony-Vacuum Oil Co., Inc	8
Gulf Oil Corp	8
Compagnie Francaise des Petroles	6

FUNCTIONS

3. The function of the Holding Company shall be to exercise the rights which it will be able to exercise by virtue of its ownership of the shares in the Operating Companies.

4. The function of the Operating Companies shall be the conduct of operations in Iran in accordance with the Government Agreement.

5. The function of the Services Company shall be the provision of services for the Operating Companies under the said Service Agreements.

6. The function of the Trading Companies shall be to exercise the rights in crude oil and petroleum products and the other rights and interests conferred upon them under the Government Agreement, this Agreement, and the A.I.O.C. Agreement and to provide funds for the Operating Companies in accordance therewith.

MANAGING DIRECTORS AND GENERAL MANAGER

7. The Participants shall procure that:

(a) Each of the Operating Companies in General Meeting of members appoints one of its Directors as Managing Director (Director General):

(i) Initially the same person shall hold both offices, and

(ii) Thereafter the same person may hold both offices at any time;

(b) The Holding Company shall appoint a General Manager with the primary responsibility of acting as liaison between its Board and each Managing Director and the General Manager shall advise him of the basic policy determined by the Holding Company and ensure that the Board of the Holding Company is kept informed of the situation in Iran. The General Manager will act in a liaison capacity and neither Managing Director shall be under his control although he may be used by the Board of the Holding Company to pass its decisions to such Managing Director;

(c) The Service Company shall appoint a General Manager with the primary responsibility of ensuring that all requests for servicing from the Operating Companies are carried out;

(d) A Meeting of the Board of the Holding Company or the Services Company shall be convened whenever the Managing Director of an Operating Company shall so request to consider any matter on which he may require guidance on policy;

(e) A Managing Director of an Operating Company may attend any Meeting of the Board or any General Meeting of the Holding Company or Services Company.

Part III.—Affiliates

8. (a) For all the purposes of this Agreement any Participant and any one or more affiliates thereof which, pursuant to the provisions contained in clause 6 Q of the Memorandum of Association of the Holding Company or the Services Company, are treated as a single Member shall be treated as a single Participant.

(b) Nothing in this clause contained shall prevent a transfer which would otherwise have been permissible under Part VI hereof.

9. Each Participant covenants that it shall not at any time by transfer to affiliates or otherwise dispose of its Participation Interest or any part thereof, or the beneficial interest in the whole or any part, in any manner which would evade or circumvent the provisions of Part IV hereof.

Part IV.—Decisions Amongst Participants

SPECIAL PROVISIONS FOR EXERCISING RIGHTS IN THE HOLDING COMPANY AND THE SERVICES COMPANY

10. (a) Each of the Participants shall exercise its voting rights at General Meetings of the Holding Company and the Services Company so as to procure that the Company concerned will pass or reject unanimously any resolution of any of the special types hereinafter mentioned in accordance with the following provisions.

(b) If the resolution is one which is necessary for the implementation of this Agreement in so far as the same relates to the transfer of shares they shall ensure that the same is passed.

(c) If the resolution is one for or to procure the winding up of the Company concerned they shall ensure that the same is only passed if all the Members of the Company are unanimously in favour thereof. In all other cases they shall ensure that the same is rejected.

(d) If the resolution is one submitted to the Company concerned in General Meeting from its Board of Directors pursuant to Clause 6 N (but not Clause 6 C (3)) of the Memorandum of Association thereof then:

(i) If such resolution is:

(a) One relating to programmes of the Operating Companies for producing or refining ascertained under Clause 28 hereof or budgets connected with the implementation of such programmes other than a resolution relating to a programme for production or refining of crude oil for any year below 90 per cent. of the programme for production or refining of crude oil in the immediately preceding year; or

(b) One relating to programmes of the Operating Companies for the development of existing oilfields or extensions thereto (including related exploration) or extension of refining facilities or budgets connected with the implementation of such programmes provided that resolutions relating to such budgets shall only fall within the specified class so long as the programme to which such budget relates does not go beyond the programme which would be drawn from the earlier of the two forecasts to be submitted annually by the Participants under Clause 27 hereof

The Participants shall ensure that the same is passed if it is established in manner hereinafter provided that apart from the provisions of this clause there would vote in favour thereof either: (*a*) all the Members of the Company except one; or (*b*) Members of the Company holding together 70 per cent. or more of the total issued share capital of the Company, and that in all other cases such resolution is rejected.

(ii) For the purposes of (i) above if previous to the meeting a Participant shall give notice to every other Participant of the way it would apart from the provisions of this clause vote thereat such notice shall establish how apart from such provisions it would vote.

(iii) If such resolution is one relating to any of the matters mentioned in Clause 12(a) and no determination thereon has become binding under that clause the Participants shall ensure that such resolution is rejected.

(iv) If such resolution is to give effect to a determination which has become binding under Clause 12 the Participants shall ensure that such resolution is passed.

(v) If such resolution is not of one of the types mentioned in (i), (iii) and (iv) above they shall ensure that such resolution is passed if it is established in manner hereinafter provided that apart from the said Clause 6 N of the Memorandum of Association and this clause the same would have been passed by the Directors thereof and in all other cases that the same is rejected.

(vi) For the purposes of (v) above if at the meeting of Directors at which the resolution is so submitted to the Company in General Meeting a Director votes or declares in writing the way he would have voted he shall thereby establish the way he would have voted.

(e) In the event of any resolution being passed or rejected contrary to the foregoing provisions of this clause and a Meeting of the Company being convened to pass a resolution to reverse the effect of such first resolution all Participants shall be bound to vote in favour of such reversing resolution.

(f) Any Participant which voted at the first meeting in accordance with the foregoing provisions (hereinafter called "an Assenting Participant") shall be entitled to call upon any Participant which voted otherwise than in accordance therewith or failed to vote (hereinafter called "a Dissenting Participant") to appoint any person designated by such Assenting Participant as its proxy to vote for it and on its behalf and in accordance with the instructions of the Assenting Participant at the said meeting: PROVIDED ALWAYS that in the event of two or more Assenting Participants designating proxies for any Dissenting Participant under the provisions of this clause, the right of the earliest in time shall prevail.

(g) No Dissenting Participant which pursuant to the foregoing provisions shall have become bound to appoint a designated proxy shall appoint any other person to be its proxy nor shall it revoke the appointment of any designated proxy or attend the meeting by its representative.

(h) Any Participant which is called upon to appoint a designated person as its proxy in accordance with sub-clause (f) hereof shall

forthwith comply with such request, and failing such compliance within twenty-four hours after such request, the Participant having the right to insist upon such appointment shall be and is hereby appointed the attorney of the Participant so called upon for it in its name and on its behalf to make such appointment as aforesaid.

(i) In the event of a Scheme of Arrangement being submitted with a view to any alteration or addition to or the abrogation of the said Clause 6 of the Memorandum of Association of either the Holding or the Services Company every Participant shall at any Meeting of the Company convened for the purpose of considering the Scheme vote against the same unless all the Participants shall prior to the holding of the Meeting have consented in writing to the Scheme.

PROVISION FOR PARTICIPANTS TO DETERMINE MATTERS UNDER GOVERNMENT AGREEMENT

11. (a) Subject to Clauses 12 and 13 each Participant shall do all such acts and things as may be necessary to give effect to any determination made under paragraph (b) hereof with respect to any matter arising out of the relationship between the Participants on the one hand and Iran and/or N.I.O.C. on the other hand under the Government Agreement so far as it affects the common rights and obligations of the Participants thereunder.

(b) A determination to which this Clause applies shall be one made by a resolution passed at a meeting of the Participants and for this purpose the procedure set out in the Memorandum and Articles of Association of the Holding Company relating to General Meetings of the Holding Company shall apply *mutatis mutandis* to any such meeting except that only ten days' notice of the meeting shall be required.

(c) The General Manager of the Holding Company shall be entitled to attend any meeting of Participants mentioned in sub-clause (b) above.

PROVISION FOR VARIATION OF THE GOVERNMENT AGREEMENT AND PARTICIPANTS' AGREEMENT

12. (a) Subject to Clause 13 each Participant shall do all such acts and things as may be necessary to give effect to any determination made under sub-clause (b) of this Clause with respect to any variation of the Government Agreement or this Agreement, whether by formal amendment or by adoption of a course of action inconsistent with their terms.

(b) A determination to which this clause applies shall be one made by a resolution passed at a Meeting of the Participants in accordance with the procedure referred to in Clause 11(b) and in favour of which there shall have voted, whether at an original or at an adjourned meeting. Participants representing at least 87.5 per cent of the total issued share capital of the Holding Company.

(c) A Participant which has not voted in favour of such resolution and which does not within ten days of its passing declare by notice in writing to all the other Participants that it will do all such acts and things as may be necessary to give effect to such resolution (here-

inafter called "a Dissenter") shall be deemed to have made an offer of its whole Participation Interest to those Participants which are not Dissenters (hereinafter called "Offerees") in their relative Share Percentages and at a price calculated in accordance with sub-clause (h) hereof and the offer to each Offeree shall remain open for acceptance as regards the whole or any part of the Participation Interest so offered to it for 45 days from the date of such offer. Any such acceptance shall be made by notice in writing addressed to the Dissenter and every other Offeree.

(d) If the whole of the Participation Interest offered under sub-clause (c) shall not have been accepted in its entirety within 25 days from the date of such offer, each Offeree shall not later than the expiry of the period of 45 days referred to in sub-clause (c) notify by tender in writing to the Dissenter and every other Offeree what part, if any, of the Participation Interest remaining unaccepted (hereinafter called "the Balance") it is willing to accept.

(e) On the expiry of the said period of 45 days the Balance shall be allocated among the Offerees as follows:

(i) To any Offeree whose tender is not greater than its relative Share Percentage of the Balance, there shall be allocated the amount for which it has tendered acceptance.

(ii) Allocations (and if necessary successive allocations) shall then be made of any remaining part of the Balance among the Offerees whose tenders are still not satisfied, always in their relative Share Percentages, until either all such tenders are satisfied or the whole Balance has been allocated whichever is the earlier.

(f) If on the expiry of the said period of 45 days the whole of the Dissenter's Participation Interest shall have been fully accepted, and the Dissenter has not, within a period of 15 days thereafter, notified all other Participants in writing that it agrees to do all such things as may be necessary to give effect to the resolution (in which case the offer shall be deemed to have been withdrawn), a sale of the Dissenter's Participation Interest shall thereupon be deemed to have been made and the Dissenter shall proceed forthwith to do all such consequential acts and things in relation to the Government Agreement, this Agreement and the A.I.O.C. Agreement or otherwise as are required to complete the sale.

(g) Unless by the expiry of the said period of 45 days the whole of the Dissenter's Participation Interest shall have been accepted no such sale as aforesaid shall be deemed to have been made, the Dissenter shall retain the whole of his Participation Interest and the resolution referred to in sub-clause B shall not be carried into effect.

(h) The price of the Participation Interest of the Dissenter shall be its scoring capital (as defined in clause 17B hereof) at the date when the sale is deemed to take place under sub-clause (f). The price of a part of the Participation Interest shall, for the purposes of this clause be that figure which bears to the price of the whole of the Participation Interest the same relationship as the part bears to the whole of the Participation Interest.

(i) The Dissenter shall pay all relevant costs (including Stamp Duty) that may arise on the transfer of the Participation Interest of the Dissenter.

(j) After the payment of such price the Dissenter shall retain no rights or interests of any nature whatsoever in the Holding Company, the Services Company and the Operating Companies or under this Agreement or the Government Agreement and the Purchasers shall to the extent of the part of the Participation Interest so acquired by each of them indemnify the Dissenter against all liability arising thereafter under either of the said Agreements.

13. Notwithstanding any of the provisions of Clauses 11 and 12 no determination shall be made thereunder which would:

(a) increase or decrease, in a discriminatory manner, the rights or obligations under this Agreement or the Government Agreement of any Participant as compared with the rights or obligations of other Participants thereunder; or

(b) restrict the freedom of action of any Participant or any of its affiliates in any matter not affecting the common rights and obligations of the Participants and in particular the freedom to sell crude oil or petroleum products at prices individually determined by it or them to any person in any market; or

(c) amend this clause, Clauses 9, 10, 11, 12 and 17 to 24 (inclusive) of this Agreement or Article 39 of the Government Agreement; or

(d) deprive Participants of their basic rights to take and lift their Share Percentage of crude oil upon the same terms from time to time as other Participants and their basic rights to have certain quantities of that crude oil refined, upon the same terms from time to time as other Participants.

EXTENSION OF GOVERNMENT AGREEMENT

14. Unless all the Participants agree in writing to the contrary, the Participants shall procure the Operating Companies to take such action as may be necessary or required in accordance with the provisions of Article 49 of the Government Agreement in order to continue such Agreement in effect for three additional five-year periods beyond the initial twenty-five year period.

PART V.—FINANCE

15. (a) Subject as hereinafter mentioned, each of the Trading Companies shall make available to each of the Operating Companies its Share Percentage of all funds which the Operating Company may from time to time need. For this purpose where a Participant has more than one Trading Company, all such Trading Companies shall be counted as one company.

(b) For this purpose each of the Operating Companies will call upon the Trading Companies for funds on such notice (not being less than thirty days) as the Board of the Operating Company may determine.

(c) Such funds provided to the Operating Companies shall be used only for the purpose for which they are provided and shall be extinguished only by credits or repayments out of amounts received for fixed asset and other charges included in operating costs, and the Operating Companies will not be obligated to account in any other manner to the Trading Companies for such funds. Extinguishment of

such funds provided through such credits or repayments to the Trading Companies shall be ratably in proportion to the balances due to each Trading Company at the date of such credit or repayment.

16. Any finance which may be needed by the Holding Company, or by the Services Company (other than that provided from outside sources) shall be provided by the Participants in proportion to their respective Share Percentages.

17. (a) Participation Percentage of any Participant shall be the proportion in terms of a percentage which its scoring capital bears to the aggregate of the scoring capital of all the Participants.

(b) The scoring capital of a Participant shall be the aggregate of the following:

(i) The paid-up share capital held by such Participant in the Holding Company and the Services Company.

(ii) Surplus (or deficit) of the Holding Company, the Services Company and the Operating Companies as at the preceding 31st December (after deducting any expenses including taxes which would be suffered by those Companies if the surplus had been distributed) attributable to the shares held by such participant after deducting any distribution by the Holding Company or the Services Company in respect of those shares from that surplus since that date.

(iii) The amount of the advances to the Holding Company and the Services Company by such Participant at the time outstanding.

(iv) The amount of the funds provided under the Government Agreement to the Operating Companies by the Trading Company or Companies of such Participant and not therefore recovered.

(v) The amount of any other advances by the Trading Company or Companies of such Participant to the Operating Companies recorded in the books of the Operating Companies provided however that such amount shall not exceed the sums paid by such Participant or its Trading Company or Companies and related thereto less any part of such advances credited or repaid by the Operating Companies.

(c) If any Participant shall fail to provide its Share Percentage of any funds or finance as and when required pursuant to the two preceding clauses the defaulting Participant shall transfer to or receive from the other Participants such number of shares in the Holding Company as will result in reducing or increasing its Share Percentage to the new Participation Percentage existing after taking into account funds or finance provided pursuant to such requirement and such shares shall be transferred to or by the other Participants in proportion to their Share Percentages.

(d) Simultaneously with the transfers of shares in the Holding Company the defaulting Participant shall transfer to or receive from the other Participants a like proportion of shares in the Services Company and such shares shall be transferred to or by the other Participants in proportion to their Share Percentages.

(e) For purposes of sub-clause (f), such shares in the capital of the Holding Company and the Services Company so transferred shall be

valued at the amount of capital paid up thereon plus (or minus) the proportion of the surplus (or deficit) of the Holding Company, the Services Company and the Operating Companies as at the preceding 31st December (after deducting any expenses including taxes which would be suffered by those Companies if the surplus had been distributed) attributable to the shares transferred after deducting any distribution by the Holding Company or the Services Company in respect of those shares from that surplus since that date.

(f) The transferees of shares under sub-clauses (c) or (d) shall transfer to the transferor thereof portions of the advances specified in sub-clause (b) (iii) and funds provided as specified in sub-clause (b) (iv) equal in nominal amount to the value of the shares so transferred plus (or minus) any related surplus (or deficit).

(g) The defaulting Participant shall pay all relevant costs (including Stamp Duty and any tax, income or otherwise) that may arise on the transfer of shares, advances and funds aforesaid.

(h) For all purposes of this Agreement, transfers required to be made by sub-clauses (c) and (d) shall be deemed to have been made, and each Participant shall concur in doing every act and thing by way of sub-division of share capital or otherwise as may be a condition precedent to giving effect to such sub-clauses. Each Participant hereby irrevocably constitutes and appoints the Secretary for the time being of the Holding Company and the Services Company respectively his attorney to execute on his behalf and in his name any and all transfers of shares in the Holding Company and the Services Company respectively from time to time required by such sub-clauses.

(i) No alteration in Share Percentages made as a result of this clause as of a date within a particular year as such term is defined in Clause 26 (a) shall affect the rights and obligations in respect of such year of any of the Participants under Clauses 29 to 35 inclusive.

(j) For the purposes of this clause "surplus" shall mean any amount distributable to shareholders as capital profits or revenue profits.

Part VI.—Transfer of Participation Interest

18. Except as provided in Clauses 12, 17, 19, 21, 22 and 23 no Participant may transfer the whole or any part of its Participation Interest.

19. A Participant may at any time transfer the whole or part of its Participation Interest to one or more of its affiliates and any such affiliate may transfer to its Transferor or to any other affiliate of that Transferor the whole or part of such Participation Interest so transferred.

20. A Participant shall not dispose except to one or more of its affiliates of any part of its interest in an affiliate which is a Participant so long as the latter continues to be a Participant.

21. Within a period of six months after the effective date, Standard Oil Company (New Jersey), Standard Oil Company of California, The Texas Company, Socony-Vacuum Oil Company Incorporated and Gulf Oil Corporation may each transfer up to one-eighth of its initial Participation Interest (whether then owned by it or its affiliates) to one or more other established American oil companies (or an American

company formed by such other companies) which satisfy the following requirements:

(a) No such transfer shall be made if any objection to such other American oil companies is taken by Her Majesty's Government or the Government of Iran and unless each of such other American oil companies (or an American company formed by such other companies) shall become party to the Government Agreement, to this Agreement and to the A.I.O.C. Agreement, assuming all the obligations arising therefrom, and shall execute and deliver to all other Participants an undertaking whereby, in the event of it being in default by 30 days in making any of the payments to Anglo-Iranian Oil Company Limited referred to in the A.I.O.C. Agreement, it will, at the option of the Transferor, transfer to the Transferor its Participation Interest and will do all such things as the other Participants may consider necessary and desirable to ensure the effectiveness of such transfer under Article 39 of the Government Agreement.

(b) The Transferee must be of sufficient responsibility to undertake the obligations required under sub-clause (a).

(c) Notwithstanding any transfer under this clause the Transferor shall, unless Anglo-Iranian Oil Company, Limited shall otherwise agree, remain liable as guarantor for the due performance of the obligations to make the payments to be made to Anglo-Iranian Oil Company Limited referred to in the A.I.O.C. Agreement.

The guarantee shall continue in force notwithstanding any variation of the Government Agreement or this Agreement made pursuant to Clause 12 and the Transferor shall not be released or discharged from the said guarantee by reason of any time or other indulgence granted to the Transferee.

(d) If any transfer under this clause is made to a number of such other American oil companies, such companies shall for all the purposes of this Agreement be treated as a single Participant or a single Member of the Holding Company or the Services Company as the case may be and shall appoint a common agent to act for all of them in all matters relating to the Government Agreement the A.I.O.C. Agreement and to this Agreement (including voting in the Holding Company and the Services Company) and shall execute and deliver to the other Participants an Agreement to that effect: Provided, however, that, when crude oil or petroleum products have been taken from Iran, all such companies independently of each other shall have the free and unhampered right to dispose thereof in their capacity as individual companies and without any restraint due to their joint representation aforesaid.

22. At any time after the expiry of a period of 5 years from the effective date a Participant may transfer the whole of its Participation Interest on the following terms and conditions:—

(a) The Participant proposing to transfer (hereinafter called "the Transferor") shall first have its Participation Interest valued by an independent expert to be nominated at the request of such Participant by the President for the time being of the Institute of Chartered Accountants in England and Wales who shall determine the *bona fide* commercial value of such Participation Interest. The value so established is hereinafter called "the commercial value" and the commercial

value of a part of a Participation Interest shall, for the purposes of this clause, be that figure which bears to the commercial value of the whole of the Participation Interest the same relationship as the part bears to the whole of the Participation Interest.

(b) The Transferor shall, not later than 20 days after the determination of the commercial value, by notice in writing to all the other Participants (hereinafter called "the Offerees") make an offer for sale of the whole of its Participation Interest to the Offerees at a price not exceeding the commercial value, in their relative Share Percentages. Such notice shall name the proposed Transferee (if any) to which the transferor intends to transfer any part of its Participation Interest which is not accepted by the Offerees. The offer to each Offeree shall remain open for acceptance as regards the whole or any part of the Participation Interest so offered to it for 45 days from the date of such offer and any such acceptance shall be made by notice in writing addressed to the Transferor and every other Offeree.

(c) If the Participation Interest so offered shall not have been accepted in its entirety within 30 days from the date of such offer, the Transferor shall forthwith notify in writing all Offerees of the acceptance made by each Offeree and what part, if any, of the Participation Interest so offered remains unaccepted (hereinafter called "the Balance").

(d) Each Offeree shall not later than the expiry of the period of 45 days referred to in sub-clause (b) notify by tender in writing the Transferor and every other Offeree of what part, if any, of the Balance it is willing to accept.

(e) On the expiry of the said period of 45 days the Balance shall be allocated among the Offerees as follows:

(i) To any Offeree whose tender is not greater than its relative Share Percentage of the Balance, there shall be allocated the amount for which it has tendered acceptance.

(ii) Allocations (and if necessary successive allocations) shall then be made of any remaining part of the Balance among the Offerees whose tenders are still not satisfied, always in their relative Share Percentages, until either all such tenders are satisfied or the whole Balance has been allocated whichever is the earlier.

(f) If on the expiry of the said period of 45 days the whole of the Participation Interest so offered shall not have been fully accepted the Transferor may, within a period of 30 days thereafter, by notice in writing to all the Offerees elect either:

(i) To withdraw all the offers as aforesaid and either retain such Participation Interest or transfer the whole of such Participation Interest to the person named as the proposed Transferee in the notice given under sub-clause (b) at a price which is not less than the price specified in the offer to the Offerees; or

(ii) To transfer to the Offerees that part of the Participation Interest which each has accepted and either retain the unallocated Balance or transfer such unallocated Balance to the person named as the proposed Transferee in the notice given under subclause (b) at a price which is not less proportionately than the price paid by the Offerees.

23. At any time after the expiry of a period of 5 years from the

effective date a Participant may transfer part of its Participation Interest only to other Participants on the following terms and conditions:

(a) The Participant proposing to transfer shall first have such part of its Participation Interest valued in the manner provided by the first sentence of sub-clause (a) of Clause 22. The commercial value of a fraction of such part of a Participation Interest shall, for the purposes of this clause, be that figure which bears to the commercial value of such part the same relation as the fraction bears to such part.

(b) Sub-clauses (b) to (e) inclusive of Clause 22 shall apply but shall be read and construed as if the part of the Participation Interest offered for sale were substituted therein for the whole of the Participation Interest.

(c) If on the expiry of the period of 45 days referred to in sub-clause (d) of Clause 22 the whole of the part of the Participation Interest offered shall not have been fully accepted the Transferor may, within a period of 30 days thereafter, by notice in writing to all the offerees elect either:

(i) To withdraw all the offers as aforesaid and retain the whole of its Participation Interest; or

(ii) To transfer to the Offerees that part of the Participation Interest which each has accepted and retain the unallocated Balance.

24. The operation of Clauses 19 to 23 inclusive shall be subject to the proviso that no Participation Interest may be transferred unless and until the proposed Transferee has executed and delivered to the other Participants an undertaking to assume all obligations under the Government Agreement, this Agreement and the A.I.O.C. Agreement arising out of or in connection with the Participation Interest transferred. The Transferor shall remain liable as guarantor for the performance of such undertaking unless the transfer is to a company which executed this Agreement or to a Transferee, performance of whose obligations in this regard is guaranteed by one of such companies. Any Transferee shall become a party to the A.I.O.C. Agreement.

The guarantee shall continue in force notwithstanding any variation of the Government Agreement or this Agreement made pursuant to Clause 12 and the Transferor shall not be released or discharged from the said guarantee by reason of any time or other indulgence granted to the Transferee.

Part VII.—Production Refining and Disposal

GENERAL POLICY

25. The Holding Company will ascertain in respect of each year the over-all programme of crude oil for the Exploration and Producing Company and the over-all programme of refinery throughout for the Refining Company. Such programmes shall include:

(*a*) The aggregate programmed quantity and the aggregate refining quantity of the Trading Companies;

(*b*) Crude oil which N.I.O.C. may have elected under Article 23 of the Government Agreement to lift in lieu of all or part of its stated

payment except in any of the first three years in which the aggregate programmed quantity does not exceed 35,000,000 cubic meters; and

(*c*) Any crude oil or petroleum products needed for internal consumption in Iran (which shall include bunkers for Iranian flag vessels) or for use by the Operating Companies.

DEFINITIONS

26. In this Part of the Agreement the following words and exoressions shall have the following meanings:

(*a*) "Year" means a calendar year beginning 1st January except that prior to the year 1958 it shall mean each of the three successive annual periods the first of which shall commence on 1st January, 1955, or three months after the effective date, whichever is the later.

(*b*) "Lift" means to export from Iran crude oil as such.

(*c*) "Refine" means to deliver crude oil to the Refining Company for refining and export from Iran the petroleum products derived therefrom.

(*d*) "Take" means to lift or refine.

(*e*) "Aggregate programmed quantity" means in relation to any year the quantity of crude oil which the Holding Company has calculated for that year under the provisions of Clause 28 except that for the first two years it shall mean: first year, 17.500,000 cubic metres; second year, 27,500,000 cubic metres; and for the third year it shall mean the greater of either (i) 35,000.000 cubic metres or (ii) the quantity calculated under the said provisions for that year.

(*f*) "Aggregate refining quantity" means in relation to any year the quantity of crude oil which the Holding Company has calculated for refining for that year under the provisions of Clause 28 except that for the first two years it shall mean: first year, 7.500.000 cubic metres; second year, 12,000,000 cubic metres; and for the third year it shall mean the greater of either (i) 15,000,000 cubic metres or (ii) the quantity calculated under the said provisions for that year.

(*g*) "Programmed quantity" and "refining quantity" when used in relation to any Participant means that Participant's Share Percentage of the aggregate programmed quantity or aggregate refining quantity as the case may be.

(*h*) "Obligatory programmed quantity" and "obligatory refining quantity" mean in relation to any Participant and to any year that part of that Participant's programmed quantity or refining quantity which that Participant is obliged to take or refine pursuant to Clause 29 (*b*) or (*d*) hereof.

(*i*) "Crude requirement" or "refinery requirement" in relation to any Participant means that Participant's requirement for crude oil or refinery throughput in respect of any year submitted under Clause 27.

(*j*) "Refined-crude proportion" means in respect of any year the proportion which the aggregate refining quantity for that year bears to the aggregate programmed quantity for that year.

(*k*) "Partipicant" shall include all Trading Companies representing such Participant.

(*l*) "Production" means in any year or other period the total quan-

tity of crude oil taken by all Participants in that year or period including any quantity which the Participants are deemed to have taken in that year or period by virtue of the operation of Clause 31 but excluding any quantity of crude oil which the Participants are deemed to have taken in that year or period under Clause 30.

REQUIREMENTS

27. The requirements of the Participants shall be notified as follows:

(*a*) Not later than the 1st October in each year after 1955 each Participant will submit to the Holding Company crude and refinery requirements for the next succeeding year and a forecast of its requirements for crude oil and refinery for the subsequent years. All such requirements shall exclude and all such forecasts shall take into account any quantity of crude oil which N.I.O.C. may elect to take under Article 23 of the Government Agreement.

(*b*) Such requirements will be utilised in determining the programmes under the next following clause and such forecasts for the other years will be mainly for the information of the Operating Companies on which they can estimate their future financial requirements.

FIXING OF PROGRAMMED QUANTITIES

28. (*a*) The Holding Company shall calculate the aggregate programmed quantity and the aggregate refining quantity as follows:

(i) On the basis of the crude requirements submitted in accordance with the preceding clause, the Holding Company shall calculate in respect of each Participant the programme which would be required so that its Share Percentage thereof would equal its crude requirement.

(ii) The programme figures calculated under paragraph (i) shall be listed in descending order of magnitude until figures corresponding to Participants whose Share Percentages total at least 70 per cent. have been listed. Subject to the provisions of sub-clause (*b*) hereof the last figure so listed shall be the aggregate programmed quantity.

(iii) The aggregate refining quantity shall be determined in the same manner.

(*b*) The aggregate programmed quantity and the aggregate refining quantity shall not be less than 90 per cent, of the aggregate programmed quantity and the aggregate refining quantity respectively for the previous year unless Participants whose Share Percentages total not less than 70 per cent. agree to a reduced programme.

RIGHTS AND OBLIGATIONS

29. (*a*) Each of the Participants shall have the following rights in each year:

(i) To take its programmed quantity from the Producing and Exploration Company;

(ii) To refine is refining quantity.

(*b*) Subject to the provisions of Clause 32, each of the Participants shall be obliged to purchase in accordance with the terms of Article 18

of the Government Agreement and to take crude oil from the Producing and Exploration Company as follows:

(i) during the first two years its programmed quantity;

(ii) during the third year quantities equal to its Share Percentage of 35,000,000 cubic metres or to 75 per cent. of its programmed quantity, whichever is the greater;

(iii) thereafter in each year 75 per cent. of its programmed quantity.

(*c*) The right of any Participant to take in any quarter more than its Share Percentage of the production in such quarter shall be subject to the right of each other Participant to take in that quarter its Share Percentage of such production.

(*d*) Subject to the provisions of Clauses 32 and 35, each of the Participants shall be obliged to refine the following quantities:—

(i) During the first two years 90 per cent. of its refining quantity.

(ii) During the third year the greater of—(a) 90 per cent. of its Share Percentage of 15,000,000 cubic metres, or (b) the refined-crude proportion of the crude oil which it takes in that year.

(iii) Thereafter in each year the refined-crude proportion of the crude oil which it takes in that year.

(*e*) Each of the Participants will strive during the first three years to refine the whole of its Share Percentage of the aggregate refining quantity.

LIFTING TOLERANCE

30. (*a*) For the purposes of this Part of this Agreement, a Participant may elect within 30 days after the commencement of any year that any crude oil taken by it within the first 15 days in such year be deemed to have been taken in the preceding year, provided that—

(i) the amount so deemed shall not exceed 4 per cent. of the programmed quantity of such Participant during such preceding year; and

(ii) the amount so deemed, when added to the crude oil taken by each such Participant during such preceding year, shall not exceed its programmed quantity for such year.

(*b*) Subject to the provisions of Clause 32, each of the Participants may elect within 30 days after the commencement of any year that any crude oil taken by it within the last 15 days in the preceding year be deemed to have been taken in the year first mentioned, provided that the amount so deemed shall not exceed 4 per cent. of such Participant's programmed quantity for such first-mentioned year.

(*c*) Any crude oil which a Participant has elected under sub-clauses (*a*) or (*b*) to be deemed to have been taken in the preceding or succeeding year, as the case may be, shall not be included in computing the crude oil taken by it in the current year.

(*d*) The provisions of sub-clauses (*a*), (*b*) and (*c*) shall apply *mutatis mutandis* in the case of petroleum products.

SPECIAL PROVISION FOR N.I.O.C. CRUDE OIL

31. In any year in which N.I.O.C. has elected under Article 23 of the Government Agreement to lift crude oil in lieu of all or part of

its stated payment and lifts such crude oil, each Participant shall be deemed for all purposes of this Agreement and of the Government Agreement to have taken a quantity of crude oil equal to that proportion of the crude oil so lifted by N.I.O.C. which the crude oil taken by such Participant bears to the total crude oil taken by all Participants. For the purpose of this clause the crude oil taken by a Participant shall include any crude oil acquired by that Participant pursuant to the provisions of Clause 35 (*b*) (iii) hereof but shall not include crude oil deemed to have been taken during that year under Clause 30 hereof.

SPECIAL PROVISIONS FOR FORFEITURE

32. (*a*) Any Participant which in any year has failed to refine its obligatory refining quantity shall forfeit the right to take crude oil in such year in excess of the quantity of crude oil which it has refined in that year divided by the refined-crude proportion for that year; provided always that no Participant shall forfeit the right to take crude oil in any year in which that Participant refined 45 per cent of its programmed quantity for that year.

(*b*) If a Participant has lifted crude oil to which it loses the right under sub-clause (*a*) above, the amount so lifted shall be deemed not to have been forfeited and shall be treated in all respects as if it were received in accordance with the provisions of Clause 35.

LIQUIDATED DAMAGES PROVISION

33. (*a*) In each of the first three years, and in any year thereafter in which production does not exceed 35,000,000 cubic metres, a Participant which fails to take its obligatory programmed quantity shall, subject to the provisions of sub-clause (*b*) of this clause, make payments by way of liquidated damages to such of the other Participants as have not so failed, calculated as follows:—

(i) The quantity of such defaulting Participant's shortfall shall be allocated among such other Participants in proportion to their respective takings in such year.

(ii) The defaulting Participant shall pay to each of such other Participants at the arithmetic average of the recipient's applicable posted price on each day of such year, less the operating costs and applicable fee relating to such crude oil for the quantities so allocated.

(*b*) the provisions of sub-clause (*a*) hereof shall not apply to any shortfall occasioned by reason of the operation of Clause 32 except during the first three years.

DISTRIBUTION OF CHARGES

34. (*a*) For the purposes of this clause and the preceding clause the following expressions shall have the following meanings—

(i) "Operating costs" shall mean in relation to—(a) crude oil, the costs of the Exploration and Producing Company computed under Section B of Article 13 of the Government Agreement and

(b) refinery throughput the costs of the Refining Company computed under the said Section B.

(ii) "Applicable fee" means in relation to—(a) crude oil, the fee of 1s. per cubic metre of crude oil which is specified in Section A(1) of Article 13 of the Government Agreement and (b) refinery throughput the fee of 1s. per cubic metre of crude oil refined computed under Section A(a) of that Article.

(*b*) Except to the extent that such amounts are paid by N.I.O.C. in accordance with the provisions of Section E of Article 14 of the Government Agreement, the total operating costs and total applicable fees shall be charged by the relevant Operating Company to the Participants in the following manner:

(i) In each year Participant shall pay a proportion of the aggregate of the crude oil operating costs and applicable fees equal to the proportion which the quantity of crude oil taken or deemed to be taken by it in such year bears to the aggregate quantity of crude oil so taken or deemed to be taken by all Participants.

(ii) For the purposes of the foregoing sub-clause the quantity taken or deemed to be taken by each Participant shall include—(a) crude oil taken by it (other than crude oil purchased pursuant to Clause 35(b)(iv)); (b) the quantity by which its crude oil takings fall short of its obligatory programmed quantity (such shortfall including any oil the right to which is forfeited under Clause 32); (c) crude oil acquired by it pursuant to Clause 35 (b)(iii) but shall not include crude oil deemed to have been taken during that year under Clause 30.

(iii) In each year each Participant shall pay a proportion of the refinery throughput operating costs and applicable fees equal to the proportion which the quantity of crude oil refined or deemed to be refined by it bears to the aggregate quantity of crude oil so refined by all the Participants.

(iv) For the purposes of the preceding sub-clause the quantity of crude oil refined or deemed to be refined by any Participant shall include—(a) crude oil refined by it (whether under Clause 29 (*a*)(ii) or Clause 35(c)(i); (b) the quantity by which the crude oil refined by it falls short of its obligatory refining quantity but shall not include any crude oil which it is deemed to have refined during that year under Clause 30.

EXCESS AVAILABILITY

35. (a) "Requested quantity" in relation to any Participant in any year means the quantity of crude oil in excess of its programmed quantity for that year which that Participant wishes in that year.

"Adjusted-request" in any year means a requested quantity or a requested quantity as scaled down under sub-clause (b)(ii) hereof if that procedure applies in that year.

"Total excess" in any year means the aggregate of the adjusted-requests for that year.

"Over-request" in relation to any Participant and any year means the amount by which that Participant's adjusted-request for that year exceeds its Share Percentage of the total excess for that year.

"Under-request" in relation to any Participant in any year in which it has no requested quantity means that Participant's Share Percentage of the total excess for that year and in relation to any other Participant in any year means the amount by which that Participant's Share Percentage of the total excess for that year exceeds its adjusted-request for that year.

(b) (i) Subject to the provisions of paragraph (ii) hereof any Participant having a requested quantity in any year may, to the extent that crude oil is determined by the Exploration and Producing Company to be available in that year, receive such requested quantity.

(ii) If in any year the aggregate of the requested quantities of all Participants exceeds the quantity of crude oil so determined to be available in that year, then the quantity available shall be allocated and if necessary successively allocated to them, each such allocation to be made in the relative Share Percentages of those whose requested quantities have not been fully met, until no further quantity remains available.

(iii) Each Participant shall be obliged to acquire its Share Percentage of the total excess in any year.

(iv) Each Participant having an over-request shall have the right and obligation to purchase the amount thereof from the Participant or Participants having an under-request.

(v) Each Participant having an under-request shall have the right and obligation to sell the amount thereof to the Participant or Participants having an over-request.

(vi) Each Participant having an under-request for sale to the Participant or Participants having an over-request shall sell and the purchaser shall accept an amount thereof in that proportion which the quantity of each purchaser's over-request bears to the total amount of all the over-requests.

(vii) The price for each such purchase and sale shall be the arithmetic average of the applicable posted price of the selling Participant concerned on each day of such year.

(e) (i) No Participant shall be required to refine any part of its adjusted-request. If, however, there is excess refinery capacity available, such capacity shall be available to Participants to refine crude oil to which they are entitled either under Clause 29 (*a*) (i) hereof or under this clause.

(ii) Notwithstanding the foregoing provisions of this clause:—

(*a*) No Participant may exercise any rights conferred by this clause if the quality of the yield from the refinery is thereby affected to the detriment of any other Participant.

(*b*) If in any year the total quantity which the Participants wish to refine under this clause exceeds the excess refinery capacity available for such refining, then the excess refinery capacity shall be allocated and if necessary successively allocated to them, each such allocation to be made in the relative Share Percentages of those whose requests have not been fully met, until no further capacity remains available.

ALLOCATION OF DISCOUNTS

36. The aggregate of the discounts allowed to the Participants under Article 25 of the Government Agreement, in respect of any year, shall

be apportioned between the Participants in the following manner:

(i) In respect of each Participant there shall be determined the quantity (if any) by which its takings of crude oil (excluding crude oil demand to have been taken under clause 30 but including crude oil received under clause 35(B) (i) and (ii)) during the year exceeds its share percentage of the minimum aggregate quantity of crude oil takings necessary to render operative the provisions of the said Article 25.

(ii) Each member so having an excess shall then be entitled to the same proportion of the aggregate of the discounts as its excess takings under sub-clause (i) bears to the aggregate of all such excess takings.

PART VIII.—GENERAL PROVISIONS

37. (a) The Participants hereby covenant that they will at all times fully perform and fulfill all their obligations under the Government Agreement

(b) Subject and without prejudice to the provisions of sub-clause (a) of this clause, the liability of each Participant in respect of any joint or joint and several liability arising under the Government Agreement shall as between the Participants be limited to an amount equal to that Participant's Share Percentage of the liability so arising.

FORCE MAJEURE

38. Where any event such as (but not limited to) war, insurrection, civil commotion, strike, storm, tidal wave, flood, epidemic, explosion, fire, lightning or earthquake is beyond the reasonable control of any Participant bound by an obligation hereunder and renders impossible or hinders or delays the performance of such obligation, the failure or omission of such Participant to perform such obligation shall not be treated as a failure or omission to comply with this Agreement. Where any such Participant as aforesaid fails or omits to perform an obligation hereunder in obedience to any Governmental act, order, regulation or decree, provided it is proved that such failure or omission is the necessary consequence of such act, order, regulation or decree, such failure or omission shall not be treated as a failure or omission to comply with this Agreement.

NOTICES, JURISDICTIONS AND INTERPRETATION

39. (i) The Participants agree that any summons, writ or other process and any notice requiring to be served on them respectively may be served at the respective addresses following and that the persons named are respectively authorised to accept service and that such service shall be deemed to be good service on them respectively.

Anglo-Iranian Oil Company, Limited at Britannic House, Finsbury Circus, London, E.C.2.

N.V. De Bataafsche Petroleum Maatschappij at

Standard Oil Company (New Jersey) at

Standard Oil Company of California at the offices of Messrs. Coward, Chance & Co., St. Swithin's House, London, E.C.2. or of their successors in business.

The Texas Company at the offices of Messrs. Lovell White & King of 5, Thavies Inn, London, E.S.1, or of their successors in business.

Soconoy-Vacuum Oil Company Incorporated at the offices of Messrs. Allen & Overy, 3, Finch Lane, London, E.C.3, or of their successors in business.

Gulf Oil Corporation at 75, Brook Street, London, W.1.

Compagnie Française des Petroles at the offices of Messrs. Denton, Hall & Burgin of 3, Grays Inn Place, London, W.C.1, or of their successors in business.

(ii) Provided Always that any Participant may at any time and from time to time during the currency of this Agreement by notice in writing to the Holding Company change the name and address of the party above-mentioned as authorised to accept service on its behalf by substituting therefor the name of some other party at an address in London in England and that after any such notice has been served this Agreement shall be read as if the name of such party and address had been substituted for that above mentioned as regards the Participant giving the said notice.

(iii) Any summons, writ or other process or any notice requiring to be served on any Participant may be served by delivering the same in a prepaid registered letter addressed to the said Participant at the aforesaid address and the same shall be deemed to have been served on the day after which it was so posted.

(iv) This Agreement shall be construed according to and be governed by English Law and the parties hereto submit to the jurisdiction of the English Courts for the sole purposes of this Agreement.

TERM OF AGREEMENT

40. This Agreement shall endure for so long as the Government Agreement endures. The termination of this Agreement shall not affect any of the benefits, right, obligations and liabilities of the Participants, or of any other persons which may subsequent to the date hereof have become bound by the terms hereof, which may have accrued up to the date of termination.

United States District Court, Southern District of New York

CIVIL ACTION NO. 86–27

[JUNE 12, 1961]

UNITED STATES OF AMERICA, PLAINTIFF

v.

STANDARD OIL COMPANY (NEW JERSEY), SOCONY-VACUUM OIL COMPANY, INC., STANDARD OIL COMPANY OF CALIFORNIA, THE TEXAS COMPANY, GULF OIL CORPORATION, DEFENDANTS

PLAINTIFF'S STATEMENT OF CLAIMS

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PLAINTIFF'S STATEMENT OF CLAIMS

I. INTRODUCTION

This memorandum is filed in response to the Court's request for a statement of the plaintiff's claims in this case. This is not a trial brief but an outline of the Government's theory of its case and the general claims which it makes with respect to its allegation that the defendants have conspired to restrain and monopolize, and have monopolized, United States foreign commerce in petroleum and its products. This case covers the activities of the major international oil companies for a period of some twenty five years and it is not the intention of this memorandum to detail all of the facts and evidence which the Government will show at trial. This statement, however, will attempt to give an outline of the course of activities which we contend the defendants have followed, and some indication of the nature of the evidence which the Government will adduce at the trial.

The documents referred to herein are almost entirely those from the files of the defendants, including the two which have signed Consent Final Judgments herein. A large number of such documents have been attached to affidavits previously filed with the Court. Because of the provisions of Pre-Trial Order No. 2 as to confidentiality and secrecy, none of the documents produced under that order have been mentioned herein. All documents referred to have been screened for security by the Government Screening Committee consisting of representatives of the Departments of State, Defense and Justice, and the Central Intelligence Agency. The documents, of course, have not yet been introduced into evidence in this case and are mentioned only in order to specify in more detail the claims of the Government in the case.

The defendants will be referred to herein as follows: Standard Oil Company (New Jersey) as "Jersey", Socony Vacuum Oil Company, Inc., now Socony-Mobil Oil Company, Inc., as "Socony", Standard Oil Company of California as "Socal", The Texas Company, now Texaco, Inc., as "Texaco" and Gulf Oil Corporation as "Gulf".

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A. COMMENTS ON THE EVIDENCE TO BE OFFERED AT THE TRIAL

Necessarily the documents which the Government will present at trial are, in the main, those which have been produced by the defendants. For the most part, the documents which we have been given are scattered and piecemeal documents relating to the activities of defendants' foreign subsidiaries. These are fragmentary and there has been a decided absence of over-all postwar policy documents of the defendants and their subsidiaries. We have many documents pointing to the existence of other documents concerning over-all policy and company agreements but these policy documents themselves, in many cases are missing. For example, we have specific references by the manager of the joint Texaco-Socal "Caltex" company in Indo-China in 1951 to an agreement in London by Standard-Vacuum Oil Company, a Jersey-Socony joint company, and the Royal Dutch-Shell partnership, to the effect that ECA (Economic Cooperation Administration) financing would not affect "As Is" quotas, but nothing about this reported understanding was produced. Was this merely a figment of the imagination of the Caltex manager at Saigon, Indo-China, who was directly interested in the local consequences of such an agreement? We do not believe so.

We have a number of documents indicating a deliberate plan to conceal the cartel activities of the defendant companies by having them directed from London, and to keep all of the documents pertaining to cartel activities which would contravene the United States antitrust laws in the files of subsidiaries abroad. For example, as far back as 1934 a Jersey official stated:

> * * * It is probable that the desired cooperative marketing arrangements ["As Is"] could be taken care of without unjustifiable risk from the standpoint of U.S. law by having our foreign marketing units managed from abroad instead of from the states; by having all questions pertaining to marketing cooperation handled exclusively abroad; and by having the parties who direct our foreign marketing operations and also handle the cooperative matters nonemployees of the Jersey company.

As another instance, in 1946 Intava (Jersey and Socony) advised Socony, Czechoslovakia, that "matters such as those referred to in the last two paragraphs of your letter are handled exclusively in London, and should not be referred to New York." The last two paragraphs referred to, included an inquiry from Socony, Czechoslovakia, concerning a discussion "of the position of Shell under the 'As Is' agreement."

We have called attention, in letters to the defendants, to the fact that a great many of the documents which were ordered to be produced by Pre-Trial Order No. 2 have not, in fact, been produced. We have recognized that in some countries, including particularly England and France, the Governments of those countries have not allowed the defendants to produce documents in the files of their subsidiaries in those countries for the use of this Court. This is particularly unfortunate in the case of England, for, as many of our documents indicate, London was the center of the "As Is" activities and we feel that the absence of London documents complicates the task of the Government in laying before the Court a complete picture of defendants' activities.

Defendants have been unwilling to advise us of the reasons for the nonproduction of specific documents called for by Pre-trial Order No. 2 so that we do not know which ones are in existence but have not been produced because of foreign law restrictions, and which ones are merely in the category of "missing" documents.

With respect to the absence of some significant documents, alluded to in other documents, we believe the Court, in this case, will be entirely justified in resolving inferences as to particular events against the nonproducing parties. (See *Societe Internationale* v. *Rogers*, 357 U.S. 197, 213 (1958).)

Despite the absence of some significant documents, the remarkable thing about this case is that there is such an abundance of direct evidence of the conspiracy which the Government charges. Seldom do conspirators engaging in illegal activities actually sit down and draw up formal instruments of agreement as, we contend, the parties did in this case. Accordingly we do not have to rely as much as in the usual antitrust case upon the rule that a conspiracy may be proved from circumstantial evidence. (*United States* v. *Socony Vacuum Oil Company*, 310 U.S. 150, 177.) In this case we do have formal agreements, and, although most of them are called "drafts" and are not signed, these essential basic agreements have been admitted by two defendants, Jersey and Socony, in their answers. Moreover, the existence of the conspiracy in the prewar period is substantiated by such a multitude of documents from defendant's files that we do not think there will be a great deal of argument by the defendants with respect to the existence and carrying out of the conspiracy in prewar days. The main points of argument, as we conceive them, will be with respect to the *extent* of participation in the conspiracy by particular defendants and the *continuation* of the conspiracy postwar. A further issue which may be raised is whether or not the defendants' activities in particular countries could be justified because of requirements of foreign law.

B. THE DEFENDANTS AND ALLEGED CO-CONSPIRATORS

The Government charges a world-wide conspiracy by a group of seven major integrated oil companies popularly referred to as "The International Oil Companies". The complaint joins as defendants the five major American oil companies engaging in foreign trade and names as co-conspirators the two principal British-Dutch oil combinations while mentioning various other oil companies which participated in parts of the conspiracy in a less prominent manner.

Two of the original defendants in this case have signed Final Judgments and are thus no longer parties to the action. Documents showing their activities with respect to carrying on the conspiracy, however, are of course, admissible in evidence under the rule that declarations and actions of co-conspirators in pursuance of the conspiracy are admissible. (*Krulewitch* v. *United States*, 336 U.S. 440, 443–444; *Sullivan* v. *United States*, 7 F.2d 355, 356 (8th Cir. 1925), cert. den. 270 U.S. 648; *Hoeppel* v. *United States*, 85 F.2d 237, 242 (D.C. Cir. 1936), cert. den. 299 U.S. 557.)

The two foreign co-conspirators named in the complaint are British Petroleum Company Limited, formerly Anglo-Iranian Oil Company

Limited, herein referred to as "Anglo-Iranian" or as "BP", and the partnership of Royal Dutch Petroleum Company, and Shell Transport and Trading Company Limited, referred to herein as "Shell". The latter two companies are the largest integrated foreign petroleum companies. These seven companies or concerns have assets running into the billions, being among the largest companies in the world. There is no dispute but that these companies are dominant in every phase of the oil industry abroad and that they roughly account for some 85% of foreign crude oil production. Six of the seven are also major factors in the United States domestic oil industry. This group of dominant companies is tied together in a maze of joint operations and joint companies in foreign operations.

Jersey and Socony, before the recent final judgment as to Jersey, were joined together in a tremendous company, Standard-Vacuum Oil Company, herein refered to as "StanVac", engaged in integrated operations in 50 countries, Africa, the Far East and Australia. The present defendants Texaco and Socal are joined together in a worldwide complex of companies known as the "Caltex Group", consisting of nearly 100 companies operating in some 70 countries of the Eastern Hemisphere, which joint companies market for both parent competitors. These companies which are controlled through a single joint holding company will be referred to collectively as "Caltex". The four defendants or former defendants, Jersey, Socony, Texaco and Socal, are joined together in a joint production company in Saudi Arabia, the Arabian American Oil Company, hereinafter referred to as "Aramco". This company has a concession of 165,000 square miles in the eastern part of Saudi Arabia and has a normal output of more than a million barrels daily.

Jersey and Socony are joined with Shell, BP and the dominant oil company in France, Compagnie Francaise Des Petroles, herein referred to as "CFP", in the Iraq Petroleum Company, herein referred to as "IPC" which has a 32,000 square mile concession in Iraq and a normal output of more than a half million barrels daily. The former defendant Gulf and co-conspirator BP have a joint concession in Kuwait through the Kuwait Oil Company Limited, owning together perhaps the most productive oil concession in the world. Appendix "A" attached hereto lists some 130 joint companies among the seven companies existing as of 1957 prior to the breakup of StanVac provided for in the Jersey Final Judgment.

It is obvious from a survey of this maze of joint companies, together with long term contracts between them, some of which are recited in the Government's complaint, that these powerful integrated oil companies are intimately bound together in their worldwide operations. The Government has contended that the joint marketing companies, StanVac and Caltex, were illegal in themselves and that defendants in conjunction with the co-conspirators have used joint production, refining, transportation, and storage companies abroad to implement the conspiracy which is charged in the complaint.

C. GOVERNMENT'S THEORY OF THE CASE

The theory of this case may be simply stated. It is that the "As Is" conspiracy, formed in 1928, continued at least up to the date of the

complaint without modification of its essential terms, in direct restraint of the foreign commerce of the United States in petroleum and its products. The objective of the conspiracy was market stabilization; its essential terms were market division and price fixing, both *per se* unreasonable restraints under the Sherman Act. Other terms, such as those dealing with the elimination of outside competition, sales and exchanges for mutual convenience and controlling expenses by avoiding the duplication of facilities, had the effect of implementing the agreed upon objective of market stabilization.

In addition, further implementing terms of the conspiracy include the use of joint marketing companies, which in themselves involve an agreement not to compete, and the use of joint production, refining, transportation and storage companies as vehicles for price fixing and market allocation, and the monopolization of foreign crude supplies.

II. Origin and Terms of the Conspiracy

On September 17, 1928, representatives of Jersey, Anglo-Iranian and Shell met in England and, after reviewing the difficulties arising from "excessive competition", formulated the "As Is" conspiracy, the terms of which were embodied in a document known as the "Pool Association" or "Achnacarry Agreement". Between 1928 and 1939 four subsequent agreements were reached in England, which were not substitutes but implementations concerning the detailed working arrangements of the original conspiracy.

The "As Is" agreements were comprehensive. Their purpose was to stabilize prices in "the world's market outside of the U.S. domestic market", and they were to be of "indefinite duration" susceptible to modification to meet changed conditions. The means used to accomplish this objective as set forth in the "As Is" agreements, include such activities as market allocation, price fixing, elimination of outside competition, mutual assistance in curtailing expenses, avoiding duplication of facilities, and sales and exchanges for mutual convenience among the parties.

A. Broadening the Conspiracy

The 1928 agreement contained no provision for participants other than Jersey, Shell and Anglo-Iranian, but in 1930 it was agreed that, "It is the intention that all outside concerns seriously engaged in the distribution of petroleum products should be admitted, . . ." By 1932, representatives of Socony, Gulf, Texaco and Atlantic Refining Company were attending "As Is" meetings. Since then these companies have cooperated in the general undertaking in varying degrees, and in various markets in regard to some or all products. This piecemeal cooperation was provided for as to additional participants in the agreement reached in 1934 entitled the "Draft Memorandum of Principles" referred to as DMOP. Jersey, Shell and Anglo-Iranian, however, agreed and were bound as to all markets and all products.

While defendant Socal was not, formally at least, a party to the early 1930 agreements, it had knowledge of the arrangements and actively attempted to use its sizeable production in Bahrein as a lever

to secure a market position in the Far East by agreement with the "As Is" parties and was promised a 10% market share in the Far East. By the time that Texaco and Socal merged their foreign interests in 1936, all groups could be sure that Bahrein production would not upset the marketing arrangements. Later the resultant Caltex companies did actively participate in the "As Is" arrangements. Gulf's Kuwait production was similarly neutralized by an agreement with BP.

B. MARKET ALLOCATION

The DMOP agreement provided that a local cartel in *any* country "as may at present exist or come into existence may by unanimous consent override this memorandum . . . during the duration of such cartel." It further provided that local arrangements with other parties should be by "separate agreement but along "As Is" lines as nearly as possible. Thus, these local arrangements were all included in the "As Is" framework.

Marketing quotas were assigned to the parties for each market and penalties were assessed against participants who exceeded them. Detailed rules were laid down as to what constituted the market for quota purposes, a distinction being made between "distribution quotas" and "supply quotas", the former generally including all consumer trade, the latter including supplies to independent product marketers or crude refineries.

The 1928 agreement provided that "surplus production" could be dealt with in only one of two ways, "either the producer to shut in such surplus production or offer it at a price which will make it competitive with production from another geographical area." *Joint* company crude production facilitated maintenance of a balance between production and the market requirements of the joint owner. Joint crude production was used as a means of carrying out the market division.

1. Sales and Exchanges to Aid Market Allocation

Provisions which encouraged sales and exchanges among the participants were adopted as early as 1928 when the principles that "Production shall retain the advantage of its geographical situation" and that "supplies shall be drawn from the nearest producing area" were expressly stated in the Achnacarry Agreement. In 1929 it was agreed that it would be "wrong for a pool member to purchase from outsiders, if other pool members were willing to supply him quantities and qualities desired on as favorable terms." In the 1934 agreement it was provided that, "Sales by one participant to another participant, arranged for their mutual convenience are at all times permissible. Such sales shall not be taken into account in calculating the performance of the supplying participant with regard to distribution quotas."

C. PRICE FIXING

The 1928 agreement provided for the use of U.S. Gulf prices, regardless of the actual point of production and the 1930 agreement provided, that for each market, "prices and selling conditions should be freely and frankly discussed and agreed upon between the local repre-

sentatives". In discussing the 1932 draft of agreement, it was stated that:

> * * * In view of the inclusion of new members and the consequent free circulation which the new memorandum would have compared with the Memorandum for European Markets (1930 agreement), it would be inadvisable, as far as certain countries are concerned, to refer too openly to the fixing of prices and the voting rights of members in this connection. The clause in the revised memorandum concerning this should therefore be phrased on very general and noncommittal lines.

The "noncommittal lines" adopted were "the maintenance of reasonable selling conditions." In the 1934 agreement (DMOP) the language was changed to read, "Prices should be maintained in all markets on a basis which should yield a fair return on a reasonable investment."

The U.S. Gulf price "according to Platt's Oilgram" was used by the "As Is" parties as a basis for sales and also in the formula set up to compute the amount of fines to be assessed against a participant who exceeded his allotted quota. The statement in Achnacarry that all oil of the same quality was of the same value, wherever located, was the basis of the principle that there should be "world prices" for oil. The continuation by these dominant companies of the use of high priced United States oil as a basis for selling low cost foreign oil, from Achnacarry up to at least the date of the complaint,[1] goes hand in hand with another Achnacarry principle that surplus production in a given area shall not be used to upset the price structure in any other area. At least up to the time of the Government's complaint, foreign oil, as a general rule, only entered the United States at United States prices.

D. OTHER FORMS OF COOPERATION

Intent to exclude outside competition and thus monopolize the petroleum markets is clear from all the "As Is" agreements. They provided for cooperation among the participants so as to maintain their collective share and their "proportion of any future increase in consumption." Loss of quota by one member was allotted to the others "in proportion to their quota" and surplus products were offered "to the other groups" at prices below those fixed by the groups. Participants were obligated to maintain their own quotas "and to extend it where possible but not at the expense of parties to these arrangements", however, they could "extend it at the expense of outsiders where possible." The 1932 draft agreement provided that "It is recognized that it is desirable to convert uncontrolled outlets into the controlled class; in view of this the purchase by 'as it' members of going distributing concerns outside 'as is' is to be recommended as tending to improve the stability of the markets." The 1934 (DMOP) agreement contained a provision that an "As Is" party could not for the first time enter a market already occupied by other "As Is" parties except through the acquisition of an outsider.

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[1] Defendant Gulf in its Answer admitted that U.S. Gulf prices were customarily used as a basis for pricing foreign oil.

The basic conspiratorial documents also provided that "no participant should derive any advantage in market position as a result of any other participant suffering from force majeure." that "expensive duplication of facilities [should be] curtailed", that "Budgets covering certain items of capital expense, and advertising budgets, should be, insofar as possible, agreed upon for each market by the participants in that market."

III. How Markets Have Been Allocated

A. CARTEL QUOTA POSITIONS 1928–1938

From the inception of the "As Is" agreements in 1928, market division has been applied on a country by country basis. Under "Achnacarry" quotas were assigned in each country for each participant and this method was followed in the 1930 and 1934 agreements, the latter further providing that in any country "a cartel . . . as may at present exist or come into existence may by unanimous consent override this memorandum (DMOP) . . . during the duration of such cartel."

Our evidence will include actual "Quota Sheets" for approximately fifty countries throughout the world, mainly in Europe and South America.[2] The effective dates for these quotas range from 1928 to 1938 and included at one time or another, all the defendants, either directly or indirectly. Socal apparently was an inside "As Is" party only in Mexico; it did not market in Europe. After its merger with Texaco, however, it was represented by Caltex. The quota sheets, plus numerous other documents and admissions in the defendant's answers support clear and direct evidence of market allocation in the period before the war. Some examples of how the "As Is" agreements were effectuated and implemented by arrangements made on a local basis to meet local conditions follow. They are only representative of many such local arrangements.

1. Austria and Germany

In 1938 Socony promised Jersey that it would stay out of the white products business in Germany and Austria in return for agreed upon positions for Socony's high-quality lubricating oil in the same area. Jersey made it clear that "the agreement effecting the share of the lubricating oil market and refiners' supply position . . . was subject by cancellation by us should the German-Vacuum violate it by entering the white products business again in the area covered thereby." The understanding was to run for 20 years.

2. Sweden

In 1937, BP, Shell, Gulf, Jersey and Texaco entered into a Swedish local cartel agreement which provided for quotas, exchange and con-

[2] Algeria, Argentina, Austria, Azores, Bahamas Islands, Baltic States, Barbados, Belgium, Bermuda, Bolivia, Brazil, British Honduras Chile, Costa Rica, Cuba, Curacao, Czechoslovakia, Denmark, Equador, Egypt, Finland, France, Germany, Guatemala, Guianas Group, Haiti, Holland, Hungary, Iceland, Italy, Jamaica, Malta, Mexico, Morocco, Nicaragua, Norway, Panama, Peru, Poland, Portugal, Salvador, San Domingo, Spain, Spanish Honduras, Sweden, Switzerland, Trinidad, Tunisia, United Kingdom and Irish Free State, Uruguay, Venezuela, Virgin Islands Windward and Leeward Islands.

trol of trade figures, prices, protection of customers, adjustments for over and undertrading and rules for dealing with other marketers. A draft of an agreement substantially the same as the 1937 document was prepared in 1939. Both of these agreements were patterned after DMOP and were *expressly* tied into DMOP.

3. South Africa

When the Russians decided to withdraw from South Africa in 1936, the four established companies, Shell, Standard-Vacuum, Texaco and Atlantic Refining Company, planned to divide up the Russians' share of the market. They were faced with impending competition, however, from a new government-sponsored company, Satmar. The four were afraid that Satmar would obtain a share of the Russian's market because of the price advantage Satmar would have through indigenous production and import protection. Therefore the established marketers agreed on a proposal that Satmar contribute one-fifth of the purchase price of the Russian company in return for a fixed gasoline gallonage.

This is the type of local cooperation which the overall "As Is" agreements allowed in order to remove local competition. As one Standard Vacuum spokesman put it: "I am very confident that we can restore prices and otherwise remove competitive difficulties to such an extent that we can restore our present levels of profits to the 1935 level."

4. Far East

In the early thirties Socony had a well developed marketing organization in the Far East and Jersey was determined to get a greater share of this market. Correspondence between Jersey officials regarding various plans for cooperating with Socony reveal that Jersey, Shell and BP strictly adhered to the "As Is" arrangement in the Far East during this period. Jersey decided to effect a merger with Socony rather than employ "a radical slashing of prices in order to break in" because such price cutting tactics might "disturb the 'As Is' position throughout the world. . . ." After the merger, which took place in 1933, the new company, Standard-Vacuum, fully subscribed to DMOP.

Marketing activities in the Far East must be viewed in the light of available supply sources. After neutralizing each other as possible competitors in the Eastern Hemisphere, Jersey and Socony faced the problem of protecting their offspring, Standard Vacuum, from the threat of a new competitor which loomed on the middle eastern horizon. Socal discovered very low cost oil in Bahrein, an island in the Persian Gulf, in 1932. This caused considerable dismay among the established marketers in the Far East.

By 1934, Jersey was casting about to find ways and means of controlling this new, dangerously close, source of cheap oil. On July 20, 1934, representatives of Standard Vacuum discussed various solutions. One was the outright sale of Bahrein Island which Socal rejected. Mr. Collier of Socal offered, however, that while "discussions were taking place, he would be able to shut back the Bahrein production to about 1,500 barrels daily." The confidential memorandum found in Jersey's files regarding this conversation states that, "It would seem a mistake to allow even a small quantity of this crude to find a direct market, and

the question of taking 100,000 or 150,000 barrels between the Royal Dutch, Anglo Persian, British Burma and Jersey-Socony-Vacuum ought to be considered." A Standard Vacuum spokesman insisted that "a fixed position for the Standard Oil Company of California to be determined now is, in my judgment, more preferable than a few years hence . . ." and again, "as far as our own situation is concerned, and this is equally true of the Anglo-Persian [Anglo-Iranian] and the Royal Dutch, the California company will no doubt have to be taken into the picture in some way."

Socal merged its Far Eastern marketing facilities with Texaco in 1936. In 1937, the new company, Caltex, was promised a "10% position . . . to be acquired over a period of four years in India and Ceylon." The following year (1938) Jersey was thinking in terms of possible merger of StanVac with Caltex but it was decided that this move was not necessary at that time. As one Jersey official put it:

> * * * I understand they have roughly a 10 or 11% position in the Far East and while no doubt they will from time to time want to increase this position, Mr. Walden informs me that they are reasonably fair to work with and he anticipates no great difficulty with them from a marketing standpoint. Before the Cal-Tex merger it was quite clear the California Company had to have outlet for the Bahrein crude, but inasmuch as they have it now thru the Cal-Tex, it would seem a fair degree of stabilization exists in Bahrein and Arabia.

In 1934 negotiations had been going on between Jersey and Socony for a separate agreement covering aviation gasoline products. These products were to be marketed through Standard Vacuum in its territory. "The centralizing in one person of all aviation fuel. As is or quota discussions with the competition . . . was unanimously agreed upon by the representatives" present at the negotiations. A committee was formed which was to "assist and advise in all quota discussions relating to allocation of aviation business."

It is apparent that the principles embodied in the basic agreements referred to thus far herein were put into effect on a worldwide basis and that by 1938 were firmly established throughout the oil industry. They were strictly adhered to by the original participants and by the other participants wherever they could be profitably brought into the cartel family.

B. CARTEL QUOTA POSITIONS 1939–1945

One important "As Is" principle to accomplish the objective of market stabilization was the force majeure provision of the 1934 and other "As Is" agreements. It was therein agreed that "by mutual assistance" a party suffering from force majeure should be enabled to maintain his normal deliveries and that "no participant should derive any advantage in market position as a result of any other participant suffering from force majeure." The principle was implemented during World War II. The war caused disruptions in the application of the "As Is" agreements in various markets. But continuation of the conspiracy, insofar as practicable, throughout the war emergency is clearly shown by the plan of September 27, 1939, entitled "Draft Prin-

ciples of Emergency Arrangements" (DPEA) which was drafted by Jersey and "wholeheartedly welcomed" by Shell and BP. Copies were given to Socony and Caltex. The plan was concerned primarily with "neutral" European countries, i.e., Norway, Denmark, Sweden, Finland, Holland, Belgium and Switzerland, but it was agreed that "the principle—may lend itself to broader application in other territories." The 1939 DPEA plan contains an important admission that "Existing arrangements" which made a distinction between distribution and supply position "will of course be maintained." This distinction was made in the "As Is" agreements, particularly DMOP, and there were no other "existing arrangements" which made that distinction.

The 1939 plan provided that the local affiliates of Jersey, Shell and Anglo-Iranian, "and such other distributors operating in your territory as you may wish to include" shall pool petroleum stocks "the intent being that to each distributor there shall be made available his pro rata share (based on quota positions) of all existing stocks, product by product, so that he may secure his quota of market distribution relative to other distributors". It was further planned that every effort should be made to maintain "*relative supply position in line with relative distribution quotas* . . .", but that to the extent that a supplier could not or would not furnish his pro rata share, other suppliers would not later be called upon to fill in the gap. [Emphasis supplied.] DPEA went on to state:

> This does not mean that a temporary situation should not or could not be adjusted as between suppliers in order to maintain supply position in line, but has regard to a failure to supply over a period, in which case the supplier so failing could not claim the privilege at some subsequent date to make up his arrears.

The parties, following DPEA, did use relative quotas during the war period in many markets. In fact, a comparison of P.A.W. (Petroleum Administration for War) quotas based upon purported sales figures submitted by local oil company industry committees raises an inference that fictitious sales figures were submitted to P.A.W. as to some Latin markets in order to preserve prewar "As Is" quotas. In 1944 the United States Government through P.A.W. oil industry committees, on which representatives of defendants were prominent, allocated total market quotas among Latin American marketers, derived from 1941 sales figures as supplied by such local industry committees. In a number of countries, P.A.W. quotas differ for each marketer from the total market quotas appearing on the "As Is" quota sheets, but after a comparison is made between the P.A.W. quotas and "As Is" quotas, both computed on a *relative basis* among "As Is" participants, there is an identical correspondence between the two sets of relative figures to the second decimal point.

Documents discussing the 1939 plan show that "As Is" market sharing agreements were in fact perpetuated in Europe through the war period. For example, Jersey's New York Office objected to the 1939 plan, insofar as it contemplated "pooling" oil. The ground for objection was that difficulties with Germany might arise because of joint tanker arrangements involving both "belligerent" and "neutral" oil. But Jersey, New York, did not object, in fact encouraged continued

cooperation short of pooling. Jersey, New York, advised Jersey's London Office, "In the event that the other two parties (Anglo-Iranian and Shell) are unable to supply their share of any of the neutral markets" and Jersey is able to supply "beyond the requirements of [its] own subsidiary," Jersey would be "strongly in favor of endeavoring to assist the other two parties" and "would favor the closest cooperation possible between the parties to the extent this will not weaken our position in dealing with the various Governments."

Jersey's objection to "pooling" was in part based upon a fear that the pool would appear "monopolistic" and, therefor, more likely to be government regulated. In most, if not all, European countries government control was a wartime fact. In a number of countries, however, for example, France, Denmark, Holland and England, the prewar market positions, which reflected prewar "As Is" quotas, were held in abeyance during the war or were used as a basis for wartime allocation. Thus, the "As Is" participants had only to begin again, postwar, where they had left off prewar. The 1939 plan shows clearly that the intent was to continue market division, postwar, on a country by country basis, the same basis in effect under "As Is", prewar.

In the whole Far East area StanVac, Caltex and Shell carried on "As Is" arrangements for division of markets up to at least 1940, the StanVac Annual Reports setting out such quotas and also the actual trading positions of the three companies. In 1940, however, these quotas were on a relative basis, a footnote stating that they would be on a 3-party relative basis for the duration of the war. Jersey in 1940 in the face of Government control in the Netherlands East Indies as to StanVac and Shell, "reaffirmed the principles which have applied in previous cases where Governmental action has disturbed the normal distribution of trade as between the two companies," i.e., "adherence to the recognized quota positions of finished products of the two companies . . . irrespective of the country of origin."

By 1944, there had been a "distortion of supply position world-wide" due principally to tank steamer shortage and "monetary exchange conditions". One of the "distortions" was that Anglo-Iranian was "unable, over a considerable period to supply any products at all to the United Kingdom". Jersey reported the resulting negotiations with Anglo-Iranian:

> The conclusion reached by all parties was that bygones would have to be bygones but that in equity each party should be entitled to resume his prewar supply position as soon as it was practical to do so and conditions permitted. It was also suggested that as between suppliers, arrangements might be made whereby the Anglo-Iranian, for example, could fill its supply position in the United Kingdom by large scale purchases in the Caribbean, and Socony Vacuum, for example, by purchases in the Persian Gulf. Such a practice would not, of course, remedy the loss of outlet for own production but would maintain the principle of supply right, and through purchases at a discount below the market would help to remedy loss of revenue. Lend-lease, of course, rendered even this solution impractical on account of the currency situation and the distinction between dollar and sterling oil.

The agreement that "bygones would have to be bygones" with

respect to *supply* position (not always the same as *market* position and thus that Anglo-Iranian would not be permitted to "make up at some future period for their short position incurred during the war years" is a strong indication that the 1939 (DPEA) plan, providing that a supplier "could not claim the privilege at some subsequent date to make up his arrears", was in fact adopted.

C. CARTEL QUOTA POSITIONS 1945–1953

Following World War II, defendants continued market allocation and price fixing on a country by country basis whenever conditions permitted. It may be here noted, however, that if government control excluded the operation of private market allocation, no inference is justified that the "As Is" conspiracy ceased to exist as to such countries, but only that it could not, for the duration of such control, be effectuated. As originally formulated, the "As Is" participants foresaw that difficulties might arise from changing conditions in particular countries and so agreed that the application of "As Is" would be world-wide, i.e., "to cover all countries to the extent that it is not contrary to law" and that "although it may be necessary to terminate the arrangement as outlined in this memorandum (DMOP) such termination shall not prevent the participants from endeavoring to get together to find a basis for its renewal." This latter provision follows logically from the agreement that "As Is" was to be of a "durable nature" and that it was to be of "indefinite duration". There is much postwar evidence that DMOP principles were carefully applied in many markets during the period. The defendants still remaining in this case feature prominently in the following illustrations:

1. Europe

(*a*) *Germany*

In a 1946 agreement between Deutsche Vacuum Oil A. G. (D.V.O.A.G.), a Socony company, and a German company referred to herein as "B. V.", Socony was given the right to supply B. V.'s market requirements not supplied from its own production. The contract, which was to run until 1951, provided that purchases by B. V. from others would not deprive Socony of the supply right unless such purchases were for "market adjustment purposes". This clearly was an application of the principle of DMOP concerning "adjustments" for over and undertrading. Also in accordance with DMOP, Socony informed Jersey and Shell of its contemplated acquisition of B. V. Further, Socony did not press for more than 15% of the gasoline market in Germany, in spite of the fact that B. V.'s quota until the end of the war was 23%. In 1948, Socony informed the Decartelization Authorities that "Socony sought only 15% of the market" in its attempt to acquire B. V. This becomes very significant in view of the fact that DMOP permitted acquisition of "outsiders" without offering pro rata participation in the acquisition to the other "As Is" parties if such acquisition did not result in a market position exceeding 15%.

(*b*) *Czechoslovakia*

A document from Socony's files addressed to Intava, London, (the joint Jersey-Socony company), states:

> If we wish to occupy the same position in the aviation business in this country as we held before the war, it is imperative that we move very quickly. . . . From your letter of 28th December 1945 we note that you are discussing the position of the Shell under the As-Is agreement with Mr. Sellers [a Socony official] and are anxiously awaiting your news as to how the matter is progressing.

(*c*) *Portugal*

In 1938 the Portuguese Government granted to Sacor, a Portuguese refiner and marketer, in which the government held a controlling interest, 50% of the supply and distribution rights in Portugal and the private companies doing business in the country were given similar rights to the remaining 50% in proportion to the volume of trade held by each of the private companies during the year 1937. Sacor's refinery was too small to produce efficient products to supply its own 50% distribution rights. It was necessary, therefore, that Sacor deal with the companies, and a new distribution contract was executed in January 1948 replacing the 1939 contract. In 1949 Sacor thought of expanding its refinery capacity. To counteract this, it was a Socony suggestion that Socony, Shell, and Atlantic Refining Company jointly build a refinery in Portugal, admitting that "it is felt by the three foreign oil companies marketing in Portugal that the best protection for their present remunerative marketing position would be to erect a local refinery".

Although the Portuguese Government encouraged certain types of cooperation among the oil companies and controlled selling prices, there is no indication that the government intended the companies to agree upon individual company quotas except for the 50/50 split between Sacor and the other marketers as a group. A Socony draft of a new contract with Sacor provided for Socony approval before Sacor could increase its sales to third parties, and further, that Socony should have the first offer on any excess quantities resulting from a termination or reduction in Sacor's commitments to sell to third parties. During the course of the negotiations, Sacor said "with regard to the distribution contract it is true that the Governmental dispatch fixes, for a certain period, Sacor's quota on the Portuguese market, but this does not mean to interfere with separate understandings we have with you and other companies."

2. Latin America

(*a*) *Brazil*

A "White Oil Cartel" and a "Black Oil Pool" were entered into by Jersey, Shell, Texaco and Atlantic in Brazil which operated at least from 1935 to 1942 concurrently with "As Is" quotas for asphalt. Cartels were forbidden by Brazilian law effective about 1938. During 1938–1946 Jersey and Socony jointly marketed aviation products under the Intava arrangements, involving price-fixing, contrary to Brazilian law.

(*b*) *Chile*

Jersey admits that it controlled, with Shell, the white products market until 1932 at which time a group of Chilean nationals formed a private company known as COPEC. A four-year price war between COPEC on the one side and Jersey and Shell on the other, prompted

consideration by the Chilean Government of legislation to control the petroleum industry. With the ostensible purpose of averting expropriation, Jersey in 1937, entered into a ten-year cartel agreement with Shell and COPEC. A second agreement was entered into in 1942 and continued at least until 1950. Jersey and Shell had an exclusive right to supply all named products to COPEC and in language which often parallels that found in DMOP, the agreement established quotas, provided for adjustments and fines in case of over and undertrading, fixed uniform discounts and sales prices, and provided for joint use of facilities.

(*c*) *Uruguay*

For the period 1938–1944, a cartel agreement was in effect, including as participants Jersey, Texaco, Shell and Atlantic. The trading figures submitted to the Petroleum Supply Committee unquestionably reflected this cartel relationship. The cartel continued after 1944 on the basis of a new agreement.

(*d*) *West Indies*

The continuation of "As Is" through the war in this area, and the intention, at least, to continue it postwar is indicated by the submission to P.A.W. (Petroleum Administration for War) in 1944 by local industry oil company committees for Latin American countries of purported trading figures of the oil companies for the year 1941 to be used as a basis for Government wartime quotas. The quotas for "As Is" participants based on such figures correspond to prewar "As Is" quotas to the second decimal point when both are reduced to *relative* figures.

(*e*) *Venezuela*

In 1951 minutes of meetings and correspondence between Jersey and Shell, they expressly discuss allocation of customers, allocation of territories, use of exchanges "to maintain" the participants' position in the market, and an express agreement on prices, all according to DMOP principles. There was an exchange of sales information between Jersey and Shell, and adjustments were made for overtrading and undertrading based on *1937* "As Is" trading quotas carried out to the fourth decimal point.

3. Middle East and Africa

(*a*) *Lebanon, Syria and Jordan*

Jersey, Socony, Shell and BP utilized their Iraq Petroleum Company (IPC) [3] refinery at Tripoli during the period 1940–1952 as a vehicle for perpetuating "As Is" quotas in Near East markets. This refinery had been acquired, expanded and operated to supply Lebanese products requirements as the consideration for IPC's pipeline wayleave rights.

In 1948, distribution of the entire refinery product output was apportioned among all marketers, irrespective of affiliation in IPC, on the basis of cartel market positions. Deficits between historical

[3] Iraq Petroleum Company is a joint crude oil production company in Iraq in which Jersey, Socony, Shell, BP and CFP participate.

ratios and actual market requirements of individual marketers were offset by imports. Later, upon the urging of Compagnie Francaise Des Petroles (CFP), the French member of IPC, each IPC member could take its share, but these products could only be marketed in Near East markets upon mutual agreement of cartel members of such markets.

Around 1950 a new problem was presented when the Arabian American Oil Company (Aramco) completed its Trans-Arabian Pipeline (Tapline) which, like IPC's pipeline, terminated in Lebanon. Jersey, Socony, Shell and BP undertook to coordinate IPC and Aramco policies with respect to crude supply, refining and marketing not only for Lebanon, but also for Syria and Transjordan through which both Tapline and IPC lines pass. This policy coordination was, of course, facilitated considerably by the participation of Jersey and Socony simultaneously in both the IPC and Aramco ventures.

The IPC and Aramco Groups in 1952 acted jointly in negotiations leading to agreements with Lebanon, Syria and Jordan. The Groups agreed to sell to these governments a fixed amount of crude not to exceed the amount necessary to supply local market requirements.

(*b*) *Egypt*

A products cartel existed in Egypt from at least 1943 to 1951 between Socony, Caltex, Shell and various local companies. Jersey entered this and other Near East markets for the first time in 1948 by purchase of a local company, SDN. There was an intimate connection between the Egyptian cartel and the market arrangements in Lebanon and Syria. The latter relationship is illustrated by a series of developments which occurred around 1950. Jersey purchased fuel oil for its Egyptian market requirements from Socony which the latter had in turn secured from Shell's Egyptian refinery at Suez. In Lebanon, Jersey sold its entire share of Tripoli refinery fuel oil to Socony, which, in turn, sold this fuel oil in Lebanese and Syrian markets where Jersey had no fuel oil position.

At about this same time, the reshuffling of Tripoli refinery allocations was in progress. The distribution of products from the refinery on the basis of IPC participations created disparities between actual market requirements and the pro rata shares received. Thus, Jersey found itself in Lebanon with certain products in excess of its actual local market requirements while Socony was faced with a deficit there. At this point Jersey was apparently tempted to utilize its surplus fuel oil to compete with Socony in the Lebanese and Syrian markets where, as already indicated, Jersey had previously had no recognized fuel oil position. However, Jersey's competitive impulse was quickly suppressed when it weighed the prospect of having Socony retaliate by cutting off Jersey's fuel oil supplies in Egypt. Jersey did not wish to risk loss of supply and consequent discontinuance of sale of fuel oil in Egypt, for fear of "... losing all claim to Egyptian business for the indefinite future."

(*c*) *West Africa*

In July 1940, Socony, Shell, Texaco and Atlantic entered into what they called a "Barter Agreement" which provided that bulk stocks of white products and gas oil laid down at Dakar, Takoradi and Apapa

would be available for the use of all so that the market could be supplied by full tanker loads. Socony was to be kept informed of the bulk stock position at each local depot and was to coordinate the shipments by each party for replenishing those stocks. This put Socony in a position to survey and police marketing activities of the other parties to the agreement.

Correspondence between Shell and Socony in 1941 indicates that these two parties were handling their aviation gasoline sales within the 1934 Draft Memorandum of Principles. They referred specifically to DMOP and involve a dispute over some aviation gasoline which Socony borrowed from Shell which was not replaced. It appears that the product in question was drawn from the joint stocks accumulated under the Barter Agreement and sold by Socony. The problem was, whose trade figures should include this sale. Shell argued that they did not want to accept the trade since "it might make us overtraders which would be a poor return for helping a friend in need". They based their argument on paragraph VII of DMOP which provides that sales for mutual convenience should not be counted in distribution quotas.

In 1945, Shell, Socony, Texaco, Atlantic and Petrocongo entered into an arrangement similar to the Barter Agreement which continued at least up to the date of the complaint, whereby the participants made joint use of storage facilities and bulk stocks regardless of which one actually shipped the goods to the storage depot, with a return obligation to ship as much as, but no more than, each had taken. This was known as the West African Replenishment Plan (WARP). If this was originally under any Government control, such control ended after the war. This plan covered all products except: (1) fuel and diesel oil in which only Socony and Shell were participants and (2) aviation products in which Socony and Shell/Petrocongo were the only participants. The indication is that since Texaco and Atlantic did not have an established position in these products Socony and Shell refused to assist them in acquiring any part of that market. This is borne out by the fact that in 1946 Texaco had a chance to sell some fuel oil in the Ivory Coast but the local WARP depot refused to loan Texaco the supplies.

4. Far East

(a) China

In 1945, Shell, StanVac and Caltex entered into discussions with representatives of the National Resources Committee of the Chinese Government regarding a cooperative effort in the development of China's indigenous petroleum resources. A plan was formulated whereby the four parties would participate in one or more joint companies which would engage in all aspects of the oil business from exploration to marketing. From the beginning to the end of the negotiations the "fundamental justification" from the oil companies point of view, "for entering into any sort of joint agreement with the Chinese . . . would be to protect the marketing position of the foreign companies insofar as the marketing of imported products is concerned . . ." and therefore the companies constantly strove to get "assurance . . . from the Chinese Government that it [would] not enter into competition

with the foreign oil companies in the marketing of imported products."

In 1947, Anglo-Iranian indicated an interest in the Kansu project but the other foreign companies vigorously opposed admitting Anglo-Iranian "as a partner if the effect of such admission would be to give the Anglo-Iranian a marketing position at the expense of prewar marketers." Active steps were taken to prevent Anglo-Iranian from participating in the negotiations and its representative was informed "that both Shell and Standard-Vacuum are out to compete with all comers in China; that they are certainly not going to facilitate the entry of a competitor at the expense of their own marketing position. . . ."

These activities in China followed a conspiratorial pattern aimed at maintaining the "As Is" prewar division of markets in this area and preventing outsiders from gaining a foothold at the expense of the established marketers. The chief concern shown over Anglo-Iranian's bid to join in the enterprise was that Anglo-Iranian, as a nonparticipant, might obtain a position at the expense of the other "As Is" parties. This was expressly forbidden by the basic "As Is" agreements. DMOP, for example, only allowed for "Entry into a market in which a participant has no quota", if it can only be done by the *purchase of an outsider who already markets in the area involved.*

(*b*) *Indo-China*

Documents in Caltex files dated in *1950 and 1951* state: ". . . the Lost Business Report attached to your referenced letter will not serve any purpose until this 'as is' situation changes"; "Other OCLL [an industry committee, ostensibly Government-sponsored] members reconfirm policy maintaining present quotas all products, who state such agreement between Shell and SVOC made in London"; "We understand Shell holds a firm position as they have obtained assurance in London that Standard would not take ECA financing as a chance to break 'as is' positions."; and "We have insisted, and we persist that on the basis of the 'as is' arrangements of 1937–39, from which OCLL percentage figures actually emanated, . . . the 'as is' arrangements referred to above applied to 'all black products'."

It may be noted that in many other cases during the war and postwar, defendants used participation in Government industry committees to serve their own "As Is" purposes.

D. SALES AND EXCHANGES BETWEEN CONSPIRATORS TO IMPLEMENT MARKET ALLOCATION

Sales and exchanges between "As Is" participants to implement the division of markets arrangements constituted one of the essential "As Is" principles. The general principle was that supplies of participants should be drawn from the nearest producing area to the market being supplied regardless of whether the supplier used its own supplies or those of another partner. This arrangement resulted, in effect, in a world-wide pooling of supplies for world-wide markets. While the United States market was excluded, supplies from the United States were covered. Sales and exchanges with outsiders were not prohibited but a pool member was not permitted to purchase from outsiders if

other members were willing to supply him quantities and qualities on the same terms.

The direct tie-in between exchanges and market quotas is illustrated by a notation on the "As Is" quota sheets for Sweden in 1936 where it is noted that compensation is given by Anglo-Iranian to Jersey and Shell for the difference between a special local quota listed and the "As Is" quota, through a reduction in Jersey's and Shell's obligation to lift gasoline from Anglo-Iranian under the "Benzine Agreement". A subsequent document in October 1942 entitled "Asiatic/Anglo-Iranian Reciprocal Supply Arrangement", provided for exchanges of products between Anglo-Iranian and Asiatic (Shell's American subsidiary) to meet the market requirements of each, and with necessary changes to be made in the "Benzine Agreement of the 24th of May 1935".

1. Coordination Committee

In 1937 Jersey, Shell and Anglo-Iranian met in New York and "came to an agreement of procedure for coordination of product supplies", since "the situation of the three groups offers opportunities for effecting substantial savings, both in transportation and in the utilization of the complimentary qualities of the products inherent in the different crudes available to the groups." A Coordination Committee was set up to arrange for exchange, usually "product for product, quality for quality and quantity for quantity" although other bases for exchanges "mutually convenient" were not excluded. One category of exchanges, i.e., those which would alter refining operations or sources, would approach, "in effect, coordination inherent in the operation of a single company."

The first meeting of the Coordination Committee was held in London on January 24, 1938 and included Standard-Vacuum as well as the other three. "The supply programs of the four companies were . . . consolidated into one statement for each product. . . ." A number of major exchanges were agreed upon or contemplated with respect to "Elimination of East/West Movements." One example was that StanVac would take its South African requirements from Anglo-Iranian at Abadan and Anglo-Iranian would take from Jersey's Aruba refinery, the equivalent quantity amount of gasoline previously purchased by StanVac. Another was that Shell could supply from the Netherlands East Indies part of StanVac's Far East requirements which were formerly supplied from New York, California and Aruba. Also Shell would allow Jersey to have supplies from the Netherlands East Indies for its oil business in Japan.

Also covered were exchanges involving "Western Supply Arrangements", including the "exchange of Heavy Venezuelan, for Light Iranian products" and a deal providing that the "European grade of naphtha" would be supplied by Shell from its Mexican refineries, or by purchase in the United States, for Jersey to market in Europe, so that Jersey would not have to increase its refining capacity for this quality gasoline.

A Jersey memorandum from S. P. Coleman in 1938 states that a review in London indicated that the supply situation of the four companies was in fairly good order at that time, but that it would require constant review and analysis to insure that it remained so. The savings

from the exchanges were usually split fifty-fifty, however, a Jersey report stated that "in a number of the exchanges there are advantages from a marketing and convenience standpoint that cannot be expressed in tangible monetary terms."

2. Postwar Exchange Patterns

From the above, it is quite clear that the exchanges were used as part of the general pattern of "As Is" arrangements and fitted into the general scheme whose primary aim was division of markets. Exchanges between the "As Is" members and participants have continued to the present time on a world-wide scale. Although for a short period, from June 1951 to July 1952, this activity may have had antitrust immunity due to the Voluntary Foreign Petroleum Supply Agreement under the Defense Production Act, it cannot be condoned when used to further the larger "As Is" conspiracy.

In 1947 Jersey proposed a long term exchange arrangement with Anglo-Iranian "whereby Standard-Vacuum requirements could be supplied at Abadan with products returned to Anglo-Iranian west of Suez." It was stated that the percent of offtake by Jersey in the Persian Gulf was dependent upon the development of these exchange arrangements. Under the proposal, Jersey, instead of increasing refining capacity in the Persian Gulf area, would install equivalent capacity in the European-Mediterranean area and exchange the products therefrom with Anglo-Iranian for products from Abadan. The place of Jersey's new refining capacity was to be dependent on determining "the most favorable point for returning of products to Anglo-Iranian. . . ." The savings in transportation were to be shared. The document went on to say that the Anglo-Iranian supply position was not known in New York, and since this proposed exchange arrangement was not previously referred to London, London's reaction would first be obtained. Again London is the point of reference.

In Holland, crude oil is produced jointly by Jersey and Shell. In 1947 Jersey was considering withdrawing from the joint arrangement noting, however, that "Shell should agree to protect Jersey's marketing position in Holland and certain contiguous areas by contracting to sell to Jersey . . . products obtained from Holland . . . crude . . . and/or make such product exchanges as would accomplish this same objective." The obvious inference is that joint crude ownership itself had been used to implement allocation of market position so that if the joint arrangement were terminated, substitute methods, i.e., sales or exchanges, would be used to accomplish the same result.

By 1951, Jersey's market requirements for Holland amounted to about a million and a half barrels of gasoline which was about 400,000 barrels more than it got from its share of Holland production through Shell's refinery. Accordingly, it obtained most of this amount from Shell's refinery and, in return, gave Shell aviation gasoline and vaporizing oil at the Netherlands West Indies. A 1951 Jersey document states that "in principle Shell supplies S.A.P. Co. (Jersey's Holland subsidiary) its total market requirements of gasoline. . . ." Shell is seen here making up Jersey's market share from its refinery offtake. The joint production and refinery operation plus the exchange arrangements enabled each party to have a stronger market position vis-a-vis outsiders. And it is obvious that the parties did not compete

themselves in a market where one made up the market requirements of the other. Another aspect of this arrangement is that, without Shell's help, Jersey would have had to import products to sell in Holland, perhaps from the United States.

In connection with a discussion of exchange arrangements between Jersey and Shell, the proposal was made in 1948 that the gasoline exchange should be included "as part of the world-wide tonnage arrangement which we (Jersey) have with that company (Shell)." A Jersey official in New York wrote to Esso Transportation Co., Ltd., London late in 1948 that "It is our feeling that the Pernis/Aruba gasoline exchange should not be brought under the overall Jersey/Shell exchange. . . ." This indicates that an overall arrangement for the exchange of tanker space was then in effect in addition to or as part of crude and product exchange arrangements.

The volume of exchanges between defendants and co-conspirators is shown by a mass of documents which we have on various exchange arrangements. A Socony report for one quarter, January–March 1951, shows the following volume of purchase or exchange arrangements:

Destination	Company	Purchase or exchange	Amount (barrels)
Italy	Texas	Exchange	118,742
Italy and France	do	do	308,696
France	Jersey	do	125,018
United States	Anglo-Iranian	Purchase	3,097,770
Italy and France	do	do	268,510
Italy	do	do	112,625
Do	do	Exchange	243,956
France	do	do	229,459
Do	do	do	108,878
Haifa and Israel	Shell	do	319,300

The purchase or exchanges from other "As Is" partners was nearly as much as Socony obtained from its own production (or share of joint production). We also have a whole series of reports in 1951 covering one arrangement, the "Shell/Socony, Rotterdam/Naples Exchange".

Prior to the initiation of the Defense Production Act Voluntary Agreement on Foreign Petroleum Supply, July 1951 to July 1952 (giving antitrust immunity for exchanges), a Socony official in May 1951 suggested that in view of the Iranian nationalization, it would be better to put future exchanges in the form of dollar purchase and sale arrangements, but that Socony hesitated to press Anglo-Iranian at the time "*in view of the cooperative nature of our dealings with the company.*" He went on to say that "Our present product exchange amounts to approximately $1,300,000 in our favor, for which we need products to pay off the balance."

IV. How Prices Have Been Controlled

A. PRICE STABILIZATION PROVISIONS IN THE BASIC OVER-ALL AGREEMENTS

The problem of excess crude production which led to "noncompensatory returns" was the major concern of the drafters of the Achnacarry Agreement. Hence the principle was enunciated that "To the extent that production is in excess of . . . consumption . . . then such

excess becomes surplus production which can only be dealt with in one of two ways: either the producer to shut in such surplus production or offer it at a price which will make it competitive with production from another geographical area. It is clear from the context that a "competitive" price was one which would not undercut that of another geographical area.

One of the basic premises of the agreement was that each crude producing area should retain its geographical advantage and the parties agreed that "the value of the basic products of uniform specification are the same at all points of origin." The value to be used at point of origin was agreed to be the price quotations made at the U. S. Gulf Coast or if the payment was to be made at the point of destination, it was to be the U. S. Gulf price plus a freight factor to be determined by the parties. It was expressly stated in the 1928 agreement that "The U. S. Gulf prices shall be the basis until further notice."

In DMOP of 1934, the U. S. Gulf Coast price was set as the basis for evaluating prices to be charged for undertrading/overtrading adjustments and for purposes of levying fines upon members that did not comply with the principles. In "Draft Principles of Emergency Arrangements" of October, 1939, pooling of cargoes to neutral countries was proposed and the price was to be U. S. Gulf prices quoted in Platt's Oilgram adjusted by freight differentials to equalize c.i.f. cost if points of production other than United States were used. The principle of using U. S. Gulf quotations as a price basis, which was agreed upon in the original conspiracy and successor agreements of 1934 and 1939, has been, and was at least up to the date of the complaint, the basis used by defendants and co-conspirators to price petroleum and its products.

B. HOW THE PRICING PROVISIONS WERE APPLIED

1. Control Over Crude Production

In 1931 Kessler of Shell wrote to Teagle of Jersey outlining a plan for world conservation to keep up the price of petroleum. Teagle replied that Jersey was "most anxious to co-operate . . . in developing a concrete plan to take care . . . the world-wide over production of crude." After making several suggestions as to how United States production could be correlated into a world-wide program to keep prices up through production proration, Teagle closed his letter by suggesting that Kessler contact Jersey's "European Directors" in London and reiterated Jersey's desire "to devise a workable . . . program looking to the balancing of the world's production against the demand of the consuming public." Thus, when officials of Jersey and the other defendants talk of "conservation" their primary concern is the price level and the prevention of surplus crude forcing its way into the markets and upsetting the price.

The stabilization of world prices has been a significant—even a paramount factor in the reasons behind the moves made by the conspirators when new and then uncontrolled crude production became available. Most foreign production companies of the defendants in this case are owned jointly by two or more of the defendants and co-conspirators. It goes without saying that sales of jointly owned crude to "outsiders" will be made at prices agreed upon by the owners, if the

sales are made by the joint company. Even if such sales are made by the individual owners from their own shares, and more particularly when such shares are sold or exchanged among the partners, joint arrangements offer a convenient forum for discussing and agreeing upon, not only crude prices but product market prices as well. The "As Is" parties, as a matter of course, have used their joint production arrangements, at least up to the date of the complaint, for that purpose. Clear examples of the above practice are shown by the price activities of the joint owners in Iraq, Venezuela, Kuwait, Arabia and India. We shall discuss Iraq and Venezuela as being typical:

(*a*) *Iraq*

In 1927, looking toward the joint crude arrangement in Iraq which was finalized in 1928, Jersey suggested that "as long as California [Socal] would not sell [its concession in Bahrein] and were not in a position to trade with any of the Iraq partners now interested in selling products in the Far East, they [Socal] would be obliged to become competitive and in forcing an entry into these materials, would adversely *affect the price structure in those markets.*"

The parties, moreover, did not just talk about the dangers of price cutting; something was done about it. Because of fear of possible price competition from Bahrein and Saudi Arabia, Socony in 1941 suggested a control committee of all Middle East producers, for the purpose of achieving "cheap production and stable prices." The "surplus" problem was not important during the war years, hence price competition was not a serious problem. But following the war, in 1946, Socony well summarized the point that joint producers work together to stabilize prices. Socony said that the Iraq partners, "are taking active steps *which will lead to the stabilization of the world market* price of oil." [Emphasis Supplied.] One specific application of this is revealed in a 1947 Jersey document discussing the relation between the price of jointly produced Iraq crude and French market prices. Jersey suggested that one consideration *against lowering the price* which the Iraq owners paid for their respective shares of oil was that CFP, the French partner, might cut the market prices in France with the aid of the French Government.

(*b*) *Venezuela*

In Venezuela, the joint crude production arrangements and "Ratio Agreement" of 1937, to which Jersey, Shell and Gulf were parties, were clearly instruments used to achieve stabilized prices. One stated purpose of the "Ratio Agreement" was to avoid "upsetting orderly development or proper marketing of their products", taking into consideration "future market requirements for Venezuelan oil." Jersey, by agreement of all three parties, was to determine whether "marketing and other contemplated conditions", including production from other areas, permitted the increasing of Venezuelan production by any of the parties.

2. Pricing for Individual Markets

In the 25 years that will be covered by the evidence, it is to be expected that modifications were created by differences in the political and economic factors affecting a particular operation whether it was

production or marketing. However, by constant reference to the U.S. Gulf price and by adding a freight differential used by all of the parties when the goods were delivered to a place other than "a point of origin", the principles of Achnacarry and successor agreements have been consistently followed throughout the whole period. Emphasis herein will be on the postwar periods since the existence and operation of the cartel can be supported by abundant evidence and is to some extent admitted for the 1930s.

One of the factors which modified the operation of the conspiracy was the postwar Government control of prices and a great deal of defendants' argument can be expected to be on that subject. Government control of retail prices did not eliminate the opportunity of the conspirators to effectuate their agreement, however, since in fixing a retail price the Government must start with the import price of crude or products as the case may be which are delivered to the country. It is also a remarkable fact that even countries in areas where crude oil was produced and refined were forced, by the concerted action of the defendants and co-conspirators, to pay high prices based on quotations of high cost United States crude.

A number of different techniques were used: the united front; identical delivered price to a government pool; agreement on f.o.b. price at shipping point resulting in identical c.i.f. prices at destination; and insistence by all marketers that reference must be made to U.S. Gulf plus a freight factor. The following illustrations have been selected from among many.

(*a*) *Chile*

In Chile, for example, the government ostensibly fixed prices but an integral part of a cartel agreement in 1950 between Jersey, Shell and a local Chilean company provided: "The price of gasoline f.o.b. port of *embarkation* shall be the minimum export quotation at the U.S. Gulf, shown in Platt's Oilgram for gasoline of 60/62 gravity, A.P.I. . . ." [Emphasis supplied.] Thus, before the products ever reached the ambit of Chilean regulation, the level of the retail price had been virtually decided upon by the cartel members. In setting the retail price, the government took the lowest of the cost figures (c.i.f. price, marketing overhead, etc.) submitted by the marketers and on that basis built the allowable retail price figure.

(*b*) *Denmark, France and Greece*

In the postwar period, Denmark, France and Greece had controls that were similar in theory. A government agency or pool was set up to which all importers sold their products. The products emanating *from* the pool, carried the government controls over price, allocation, etc. The evidence will show, however, that c.i.f. prices to the pool were always figured on the same basis regardless of which company was the importer, i.e., U.S. Gulf plus a freight factor. In the case of Denmark, freight was from the Netherlands West Indies; in France from the United States; in Greece, from the jointly owned Naples refinery. After the Danish Government pool ended in 1947 Socony supplied a local marketer using a price formula tied to U.S. Gulf and which could be modified only if a "major" company operating in Denmark quoted lower figures.

In justifying a formula for c.i.f. costs to France which equaled the landed costs of products from United States, the marketers gave the reason that there was no competitive market other than the United States. The lack of competitive markets in both France and Denmark is further indicated when the president of Socony stated in 1950 that thereafter Denmark's supplies were to come from France instead of the Caribbean, and outlining the prices said: "The prices paid are regular ones, and I believe are practiced by all companies exporting from France."

In the Greek market the importers bid monthly for the right to supply the pool and in 1951, Socony stated that all the participants were aiming at a "U.S. Gulf plus" pricing formula. The "aiming" must have been toward *governmental acceptance of* U.S. Gulf plus rather than *use* of it because in 1947 Socony decided the following:

> * * * Greece will be billed a.c. and f. equal to the low of Platt's plus freight from the U.S. Gulf. In the breakdown the freight will be shown as the actual freight from the French refinery to Greece and the remainder will be added to the product cost. . . .

The tenor of the companies conduct in each market negatives anything but agreement to cooperate in the setting of prices to the market.

(*c*) *Egypt*

In 1947 the marketers in Egypt (Jersey, Shell, Socony, Caltex) agreed that a united front must be shown the government regarding prices. Consequently, agreement was reached between their principals in New York and London that the marketers should stand fast that c.i.f. prices to Egypt would be U.S. Gulf plus a freight differential regardless of actual origin. In 1951, they combined their efforts to form an agreement with the government that products from the indigenous production would be valued on the same basis as the imports. Evidence of private cartel arrangements in Egypt is summarized elsewhere, but agreement on price is necessarily a factor in every cartel. The direct information on price matters regarding Egypt is certainly consistent with the tenets of the earlier conspiracy documents.

(*d*) *Iraq*

In Iraq, the ex-refinery price to that market was low of Platt's without a freight factor. This was justified by a Jersey man on the ground that products were from indigenous crude, i.e., a point of origin. The market price in Iraq was necessarily fixed by I.P.C. members because under its concession no other marketer was allowed.

(*e*) *Italy*

Regarding Italy, the government actively participated in the petroleum industry from 1936. In 1936, a time when some defendants have admitted that the world-wide arrangements were in full force, products refined in Italy were priced such to be equal to the c.i.f. laid down cost of products imported from U.S. Gulf. In 1949 Socony threatened Shell, Jersey and the local company, A.G.I.P., with price competition unless those three companies relinquished to Socony a share in the Naples market. In 1951 after Socony was in the market too, prices were still formulated as U.S. Gulf plus a freight or geographical differential.

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(*f*) *Norway*

During the postwar period in Norway, Socony supplied a local concern at c.i.f. price equal to the low U.S. Gulf quotation plus freight from the Netherlands West Indies. Socony was obligated to change this formula only if any other major supplier to the Norwegian market quoted lower prices. The only other major supplier to Norway was Jersey. Socony was careful, "for legal reasons", to eliminate specific reference to Jersey from the contract as originally proposed in favor of the more indefinite phrase "other major suppliers."

(*g*) *Syria, Lebanon and Trans-Jordan*

The Tapline company[1] made identical agreements with Syria, Lebanon and Trans-Jordan whereby it supplied its pro rata share up to 200,000 tons of the crude necessary to supply locally needed products at world market prices. But the danger of handing over that much crude to these governments was well recognized. In 1952 the head of Jersey's marketing in the Middle East stated:

> An ounce of prevention is worth a pound of cure. Some of the dangers are:
>
> (1) that the government itself will go into business and thus establish a pattern for the whole Middle East . . . .
>
> (2) Syria may jockey one or more companies into supplying from foreign refineries at f.o.b. prices lower than the world market . . . Extension of this practice would be upsetting to all pricing in the Middle East if not for Europe too.
>
> (3) . . . Syria might . . . export and thus initiate another chain of events deleterious to the industry generally.

Under the terms of the agreement that Tapline and IPC signed with these governments, none of the crude or the products received could be used anywhere but within the borders of the three respective countries. Thus, no uncontrolled crude or products could get out to affect the prices set by the conspirators.

(*h*) *Sudan*

An indication of the degree to which the conspirators met with success in "stabilizing" world-wide prices in the petroleum industry may be found in the *joint* answer of Socony and Shell to a question put by the Sudanese Government in 1949: "Why are prices always tied to the U.S. Gulf irrespective of point of production?" Socony admitted that no price competition existed anywhere but in the United States when it suggested to Shell that the following be included in the answer submitted:

> With the disappearance in September 1939 of Constanza [Roumania] as a free oil market, the *only* market in which regular sales of oil in tanker loads take place is the U.S. Gulf. Oil is not offered for sale elsewhere to anyone who might wish to buy it in bulk because the production companies concerned are able to dispose of their entire production to established customers. Consequently the conditions which might give rise to the establish-

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[1] A company owned by the participants in Aramco, Texaco, Socal, Jersey and Socony. These companies built the Trans-Arabian Pipeline referred to as "Tapline."

ment of free quotations for export sales do not arise anywhere else than in the U.S. Gulf Market.

3. "Platt's is the gospel"

A Jersey marketing executive stated to his superior in New York in 1951 that Platt's quotations were used "for export sales . . . at Ras Tanura [Aramco], Bahrein [Caltex] and Abadan [A.I.O.C.]." These are all jointly owned refineries, operated in conjunction with jointly owned production ventures. In discussing the running arguments between the IPC partners regarding the evaluation of products from another refinery, a Socony executive stated in the same year (1951):

> Most important I feel that when we are dealing with products we must adhere to prices which are based on Platt's. Platt's is the gospel that we have been preaching up and down throughout the world. If we ourselves set a precedent in breaking away from it, it will do us no good.

Thus we see that in 1951 the conspirators still advocated strict adherence to prices based upon U.S. Gulf prices, as quoted in Platt's Oilgram, which was first enunciated at Achnacarry in 1928. While these parties sometimes referred to "world prices" as if they had no control over such prices, the fact is that these seven dominant integrated companies, having 85% of foreign (free world) crude oil production and a preponderant ownership of foreign refineries, together with a substantial amount of the United States crude and refining capacity, had almost complete power over "world prices" of crude produced abroad and products refined abroad. Acting collectively on pricing in various joint producing and refining arrangements, they effectively fixed "world prices."

V. MONOPOLIZATION

A. INTENT AND PURPOSE OF BASIC AGREEMENTS

Section 2 of the Sherman Act condemns monopolizations and combinations or conspiracies to monopolize "any part of the trade or commerce . . . with foreign nations."

In the *American Tobacco* case (American Co. v. United States, 328 U.S. 781 (1946)), the Supreme Court stated:

> A correct interpretation of the statute and of the authorities makes it the crime of monopolizing, under § 2 of the Sherman Act, for parties, as in these cases, to combine or conspire to acquire or maintain the power to exclude competitors from any part of the trade or commerce among the several states or with foreign nations, provided they also have such a power that they are able, as a group, to exclude actual or potential competition from the field and provided that they have the intent and purpose to exercise that power.

The Court held that it was not necessary to show actual exclusion of competitors. In that case the major cigarette manufacturers in the United States about 75% of the production, were found by the jury to have fixed prices and excluded competition in the purchase of the tobacco going into the making of cigarettes, and in the distribution and sale of cigarettes.

The intent to monopolize all foreign markets in which the conspirators operated, including all United States exports to such markets is clearly expressed in basic "As Is" documents. They provide for excluding outsiders, stabilizing and controlling prices, dividing territories and markets and the selling and exchanging of crude and products among the cartel members. These participants had at that time and have largely maintained a generally dominant position in most foreign markets.

The 1932 Agreement is very explicit when it states:

> * * * the underlying principle of these arrangements is that the parties jointly and severally shall give in the most economical and efficient manner the maximum possible service to the public and by these means and the maintenance of reasonable prices and selling conditions *secure the greatest possible share of the market and of the goodwill attaching thereto* . . . . [Emphasis supplied.]

B. ELIMINATION OF OUTSIDE COMPETITION

DMOP states that each participant "shall do his utmost to maintain his share of the market." The Heads of Agreement went on "and to extend it at the expense of outsiders where possible, in cooperation with his 'as is' partners, but never at the . . . expense of those partners." The Heads of Agreement further states that it is recognized that it is desirable "to convert uncontrolled outlets into the controlled class," and therefore purchase of outside distributors is recommended "as tending to improve the stability of the markets."

DMOP provides, with some minor exceptions, that if one participant wished to purchase an outside distributor in any market, he should offer it to the other participants in such market and then the outlet would be added pro rata to the quotas of all. It also provides that the "As Is" partners not sell to outsiders except by consent of the parties in the market of destination except under very carefully defined circumstances. Crude oil could be sold to "certain refineries in various countries that have a position in the market" [because] "while it is not the intention to improve that position neither is it the intention to deny to the participants the right to sell crude to such refiners and thereby forcing the crude supply outlet to outside suppliers." The "As Is" partners were constantly trying to control supply so that outside oil would not upset market allocation and price fixing.

There are many illustrations of each of the above practices by the "As Is" parties throughout the period covered by this case, some of which have been mentioned elsewhere herein.

C. JOINT EFFORTS TO "SECURE THE GREATEST POSSIBLE SHARE OF THE MARKET"

In the original Achnacarry Agreement the principles were formulated that ". . . economies must be effected, waste must be eliminated, the expensive duplication of facilities curtailed." In the three subsequent "As Is" agreements, identical language is found to the effect that:

> * * * the underlying principle of these arrangements is that the parties *jointly* and severally shall give in the most economical

and efficient manner the maximum possible service to the public....

The 1930 and 1932 agreements go on to state ". . . and by these means and the maintenance of reasonable prices and selling conditions secure the greatest possible share of the market and of the good will attaching thereto . . ." while DMOP states the purpose as being "in order to increase the consumption of petroleum products."

This language clearly indicates that joint efforts were contemplated where necessary to attain the expressed aims of economy and efficiency in order to "secure the greatest possible share of the market." It can also be shown that "outsiders" confronted wtih a solid wall of close cooperation between the "As Is" groups resorted to combining in order to survive in marketing their products. This pattern is especially seen in the Far East where Jersey and Socony merged their marketing activities in 1934, forming the Standard Vacuum group which specifically endorsed and operated within the principles of DMOP. Meanwhile, Standard Oil of California had discovered oil in Bahrein which it wanted to market in the Far Eastern area. Faced by the powerful "As Is" coalition of StanVac, Shell and Anglo-Iranian, Socal chose to merge with Texaco, which had an established marketing organization, rather than fight for markets against heavy odds. The resultant company, Caltex, in turn, joined the "As Is" conspiracy.

Many of the provisions of the basic "As Is" agreements encourage very close cooperation between the participants in every phase of their business from trading customers and sharing economies, to fixing prices. The ultimate expression of these tendencies is found in the true joint marketing endeavor such as Standard-Vacuum and Caltex. All competition ceased between Jersey and Socony in the StanVac territory which covered southeastern Africa, Asia and Australia and between Texaco and Socal in Europe, Asia and Africa.

Another marketing merger between Socony and Jersey was Intava Inc. which marketed aviation products all over the world except the United States from 1935 to 1946. There were five zones of operation: Zone I—Northern and Western Europe; Zone II—North Africa, Southern and Eastern Europe; Zone III—Canada, Eastern South America and West Africa; Zone IV—Mexico, Central America, Caribbean Area, and South America, and Zone V—Pacific Islands, Australia, Asia and South Africa. Zone V corresponded with StanVac's territory and in this area Intava products were marketed through Standard-Vacuum. A letter in the Jersey files written in 1935 states that "The arrangement must eliminate competition between the two companies in the aviation business." Supply rights were allocated between Jersey and Socony and profits were divided on the same percentages, which were apparently "reasonably proportionate to the initial contribution of trade."

The mutual aviation business was coordinated with "As Is" by the "centralizing in one person of all aviation fuel 'As Is' or quota discussions with the competition." While Intava was formally terminated in 1946, the parties agreed in 1951 to cooperative marketing of aviation gasoline where one or the other had no marketing or airport supply facilities. Assignments of products from Esso to Socony had been going on for four years and Socony asked that Esso continue to deal di-

rect with Socony instead of Shell as to "business assigned to us at airports where Shell serviced for our account." Intava was in operation in Brazil in spite of the Brazilian law 869 which was designed to prevent such joint operations. Jersey and Socony recognized that the Intava operation constituted a violation of that law and took steps by agreement to evade it.

Socal and Texaco merged their marketing activities east of Suez in 1936 and their European marketing activities in 1947. The StanVac partners considered merging with Caltex but decided to drop the idea for several reasons, among which was that Caltex was "reasonably fair to work with and no great difficulty with them from a marketing standpoint" was anticipated. In making this decision StanVac took into consideration that Caltex had roughly a 10 or 11% position in the Far East and that it would probably "from time to time want to increase this position. . . ." By 1946, Caltex had increased its position to almost 25% and planned to "increase it to 33⅓ by 1956 and remain at 33⅓% thereafter." As indicated by the allocation of quotas on a 3-party basis in the Far East, such increased market percentage was allowed by agreement of the other "As Is" parties.

D. ILLEGALITY OF JOINT MARKETING COMPANIES

It has been the Government's contention from the beginning of this case that the giant joint marketing companies, StanVac and Caltex, were illegal in themselves. StanVac has been dissolved by a Final Judgment entered in this case on November 14, 1960, but the complex of Caltex companies, the joint 50–50 subsidiaries of defendants Texaco and Socal, still continue to operate on a world-wide basis. These two tremendous companies arose out of, and in the context of, the "As Is" arrangements for dividing up foreign markets and for stabilizing and fixing prices on a world-wide basis. Accordingly, in the Government's view, these companies have represented in the most concrete form, the continuation of the "As Is" arrangements. In each case the two partners were dominant integrated oil companies operating on a worldwide scale, who joined forces to market jointly and thus to completely eliminate any competition between the two parents. In the case of StanVac, there was an express agreement that the two partners would not compete in the whole Far East, the area in which the joint company was to operate for both parents. In the case of Caltex, a so-called "Blue Line Area" was designated to be served exclusively by the Caltex companies and in which the two parents would not operate themselves. Even in the absence of any agreement to this effect, it is, of course, quite evident that partners do not compete. It was the conclusion of Judge Murphy in the *Arabian Oil* case (United States v. Standard Oil Company of California, 155 F. Supp. 121, 150 (S.D.N.Y. 1957)), upon the basis of the facts before him without any allegations there of antitrust illegality, that "All Socal and Texas did, in effect, was to agree that it would be to their mutual advantage not to compete in certain markets."

Joint marketing companies and arrangements of the type found here have been condemned in a number of foreign trade antitrust cases. See *United States* v. *National Lead Company*, 63 F. Supp. 513 (S.D.

N.Y. 1945) mod. and aff'd, 332 U.S. 319 (1947); *Timken Roller Bearing Co.* v. *United States*, 341 U.S. 593 (1951); *United States* v. *Imperial Chemical Industries, Ltd.*, 100 F. Supp. 504 (S.D.N.Y. 1951); *United States v. Minnesota Mining & Manufacturing Co.*, 92 F. Supp. 947 (D. Mass. 1950). With respect to the legality of joint foreign marketing companies in the *ICI* case, Judge Ryan found (100 F. Supp. at 557):

> * * * the proof here shows an American concern already established in a local foreign market, and a British concern, which has a foothold in the same local foreign market, combining to form a jointly owned company to the end that the same foreign market may be developed for their mutual benefit and profits divided on an agreed basis. To this, and as an incident to the formation of the foreign company, we find added by agreement not only a joint contribution of capital investment but a pooling of patents and processes owned by the parent companies. That a foreign company created under such conditions by concerted action of actual or potential competitors meets the tests of per se legality is open to serious question. But, with a dubious nod we assume that it does; we find, however, that the very purpose with which the foreign companies here involved were conceived and the circumstances under which they were born place them under the bar.

He later added:

> Even if the arrangements involving joint companies abroad were considered independently of the other agreements, the decision of the Supreme Court in the Timken case would strongly indicate that they fall within the jurisdiction of the Sherman Act and are violative of its provisions.

It is contended by the Government that the circumstances under which both StanVac and Caltex were formed and their participation in the "As Is" arrangements, together with the fact that both operated not just in one country but eliminated competition between the two parents in each case in a wide area of the world, makes an even more persuasive case for illegality than that found by Judge Ryan in *ICI*.

E. MONOPOLIZATION THROUGH JOINT CRUDE PRODUCTION ARRANGEMENTS

Important to the "As Is" objective of market stabilization was control of crude oil. In fact, the fear of "surplus" crude production was a primary motivating factor for the "As Is" parties, who agreed that crude production would be "indirectly" controlled by means of market allocation and price stabilization. In addition to such indirect control, they further agreed to "shut in" potential surplus production or, if actually produced, to "offer it at a price which will make it competitive with production from another geographical area." In theory this agreement might have been effectuated without joint ownership of crude but joint ownership made it easier for the parties to prevent surplus production and stabilize the markets.

At the time of the first "As Is" agreement in 1928, Jersey, Shell and Anglo-Iranian were already jointly interested in the oil of Iraq, then

one of the two major producing countries of the Middle East. From that beginning, joint crude production arrangements increased to such an extent that by 1954, with the Iranian Consortium,[1] all of the crude oil potential of the Middle East sources (the countries of Iraq, Iran, Saudi Arabia, Kuwait and Bahrein) has been under the control, through joint arrangements, of the original "As Is" parties, Jersey, Shell and Anglo-Iranian, and the four "As Is" participants, Socony, Gulf, Texaco and Socal. Commencing in 1933, the joint production technique was followed in Venezuela, which, except for the United States, was, and still is, the principal crude source of the Western Hemisphere. By 1955 a substantial part of Venezuela crude was being produced pursuant to various joint arrangements, involving Jersey, Shell, Gulf, Socony and others. Joint crude production and/or joint exploration arrangements, involving in each case at least two of the principal "As Is" participants, have existed, and still exist in many other countries. Without referring to all joint production arrangements which have existed since the origin of "As Is", a brief reference to the principal arrangements in the major crude producing areas, should suffice to show how the joint control over crude has been used in the conspiracy.

Iraq.—Continuously since 1928, Iraq crude has been jointly controlled by Jersey, Socony, Shell, Anglo-Iranian and the French interests of Compagnie Francaise Des Petroles (CFP) and Participants and Exploration Corporation (Gulbenkian).

Iran.—During the period 1928–1954, Anglo-Iranian controlled the production of crude in Iran. Since 1954, Iranian crude had been jointly controlled by Jersey, Socony, Gulf, Texaco, Socal, Anglo-Iranian (Now BP), Shell and CFP, with a minority 5% interest in other American companies through the Iranian Consortium.

Saudi Arabia.—Since 1947, Texaco, Socal, Jersey and Socony have jointly controlled the crude production of Arabia, while during the prior period 1936–1947 such crude was jointly controlled by Texaco and Socal.

Bahrein.—Since 1936 Texaco and Socal have jointly controlled the crude production of Bahrein.

Kuwait.—Since 1934 Anglo-Iranian and Gulf have jointly controlled the production of Kuwait.

Venezuela.—Since 1933, Jersey and Gulf, and since 1938, Jersey, Gulf and Shell have jointly produced a substantial part of Venezuelan crude. Joint exploration and producing ventures in Venezuela have included such combinations as Jersey-Texaco; Socony-Texaco-Atlantic Refining Company; Texaco-Atlantic; Jersey-Texaco-Socal-Sun Oil Company; Gulf-Jersey-Atlantic; and Socony-Gulf.

Colombia.—Since 1936 a substantial part of Colombia crude has been produced jointly by Texaco-Socony. Other joint arrangements for exploration and production in Colombia have included combinations of Texaco-Socal; Texaco-Jersey; Texaco-Shell; Socony-Shell; Socony-Jersey and Gulf-Shell.

Holland.—Since 1928 crude from Holland has been jointly produced by Jersey-Shell.

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[1] Attorney General Brownell gave a qualified opinion of nonviolation of the antitrust laws as to this arrangement in view of national defense considerations, but he expressly reserved all rights to prosecute this case.

Canada.—Exploration in Canada has also been on a joint basis, including such combinations as Jersey-Shell-Texaco-Gulf-Socony and Socony-Gulf-Amerada Petroleum Company.

Other joint exploration and production arrangements have included: exploration in *Argentina* by Texaco-Socony; exploration and production in *New Zealand* by Jersey-Socony-Socal-Texaco; exploration and production in *New Guinea* by Jersey-Socony-Socal-Texaco-Shell; exploration in *North Africa* by Socal-Texaco; production in the *Far East* by Anglo Iranian-Shell and by Socal-Texaco; exploration and production in *India* by Shell-Jersey-Anglo Iranian-Socony-Socal-Texaco; production in *Germany* by Socony-Jersey-Shell and by Socony-Shell; and exploration and production in *Cuba* and the *Dominican Republic* by Jersey-Shell.

F. MONOPOLY POWER TO CONTROL SURPLUS CRUDE

The fact that the conspirators were able to control prices and prevent surplus oil from upsetting the market equilibrium demonstrates the existence of monopoly power. The problem of surplus was controlled on the production level and the effects of such control extended through every phase of the industry. A basic premise of the "As Is" agreements was that "sufficient returns" could be made only if production was balanced with consumption, viewed not from the standpoint of each individual company but from the standpoint of over-all market demand. Avoiding "surplus" production, therefore, became an important "As Is" activity. Joint production arrangements materially assisted the parties in this respect.

1. Iraq, Bahrein and Saudi Arabia

In the early thirties, the "As Is" owners of Iraq oil, Jersey, Socony, Shell, BP and the French interests, gave permission to Jersey and Socony to negotiate with Socal for the purpose of preventing "surplus" production by Socal from Bahrein, a newly discovered Middle East source. It was recognized that Bahrein oil would be a threat, so it was suggested that:

> * * * if during the interval of negotiations [to purchase or shut in Bahrein production] it will be necessary to give the California Company relief, it is urged that the price for Bahrein oil be made as low as possible since an offtake of this oil can be secured at considerable relative sacrifice on the part of all the groups. Under these conditions, it may be preferable to pay a premium to *shut-back this production* during negotiations providing this could be arranged on a satisfactory basis. [Emphasis supplied.]

The Iraq partners each had agreed not to participate in oil development within, or the sale of oil from, certain boundaries referred to as the "Red Line" area, without offering participation to the other partners. This area corresponded roughly with the old Ottoman Empire and included Saudi Arabia and Bahrein. Because of this restriction it was agreed by the Iraq partners that if they acquired Bahrein and Arabian oil, it would be divided among them in proportion to their Iraq holdings. CFP, one of the French interests, agreed, however, that it would offer its share to Jersey, Socony, Shell

and Anglo-Iranian "so long as they themselves [CFP] did not possess an Eastern market."

In 1936 Texaco joined Socal in Bahrein and Saudi Arabia. Arabian oil became a further "surplus" production threat. Proposals to curb potential surplus oil soon followed. In 1939 a Jersey official suggested, "we feel that we must be as helpful as possible in taking excess supplies from the Persian Gulf", but that it would be preferable to work out the "entire problem of outlets in the Persian Gulf with Anglo-Iranian, Gulf and California-Texaco in conjunction with Shell." And in 1941 a Socony official, noting that the groups having control in the Middle East were the big seven, suggested an informal but authoritative committee "to determine how much crude has to be lifted from each producing area" in the Middle East. The intended purpose was "to secure fair and orderly development in the whole area with a view to maintaining a cheap production and stable prices."

Following the war the "Red Line" restrictions were removed from the Iraq arrangements, thus permitting Jersey and Socony to become partners with Socal and Texaco in Saudi Arabia without offering ownership participation to the other Iraq partners. One of the admitted purposes of this new Arabian arrangement was to give Socal and Texaco "a wider market in the Eastern Hemisphere than the joint and individual facilities of Texaco and Socal afforded." Apparently this objective was attained, for during the negotiations with Jersey and Socony, Caltex estimated that for the period 1947–1966, its share of the market east of Suez would be increased to 25% by 1950, to 30% by 1960 and "to 33⅓% by 1966 *and remain at 33⅓% thereafter.*" [Emphasis supplied.]

The partners in Iraq were very careful to prevent "outsiders" from acquiring surplus crude produced by the joint venture. In 1933, the director of the company pointed out that, "In the search for a refinery customer I should endeavor not to sell to a refinery that competes with one or the other of the group interests in that particular territory." He assured the partners that excess Iraq oil would not be sold to competitors of the partners in any area. In discussing a procedure proposed in 1946 for selling excess oil to outsiders, if 3 or 4 partners agreed, an official stated, "I do not believe it desirable that IPC crude ever be thrown on the market under these circumstances." He suggested that in case a Group which had accepted a quota of crude failed to lift it, it should be offered to the other Groups instead of to outsiders. A *1950* telegram from Socony, London, to Socony, New York states that Shell and Anglo-Iranian both opposed allowing the Iraq Government to sell Iraq oil to outsiders. A *1952* letter from Socony, London, to Socony, New York, considered it advisable to purchase from the Iraq Government its surplus products to avoid the question of the Government selling the excess for export.

The Iraq partners also prevented Gulbenkian's share of Iraq oil from getting into outside hands by agreeing to purchase his proportionate share of the oil produced. This was necessary for "market stabilization" purposes because, although Gulbenkian was one of the Iraq owners, he was not in the marketing business, and yet he had to dispose of his share of the oil. In 1946, during negotiations to revise

the agreement among the joint owners of Iraq oil, Gulbenkian stated to Jersey that he had turned down inquiries from Cepsa and Sacor, both "outsiders", on the ground that "his oil was not for sale to outsiders." A 1947 Socony letter speaks of the danger of permitting Gulbenkian to throw *even small quantities of his oil on the open market.*

2. Kuwait and Iran

(*a*) *Gulf*

In the negotiations leading up to the joint Anglo-Iranian-Gulf arrangement in Kuwait, Anglo-Iranian informed Gulf in 1933 that it had recently completed its combination with Royal Dutch Shell for "*protection of their present 'as is' position.*" A Gulf representative, in reporting on his conferences with Anglo-Iranian at that time, stated that: "I judge that the consummation of this ['As Is'] deal involved a great deal of work, study and careful thought; therefore, they are frankly afraid that this situation will be disturbed and possibly upset if we are left at liberty to proceed in Kuwait without let or hindrance." Another Gulf official added that: "So far as 'as is' is concerned, he [William Fraser, head of Anglo-Iranian] does not care about it being agreed to in all its rigor and details; he merely does not want Kuwait oil to upset Anglo-Persian Oil Company's market condition." [Emphasis supplied.]

Anglo-Iranian's "As Is" objectives were accomplished; Gulf agreed to restrict its sale of Kuwait oil so as "*not to upset or injure . . . [Anglo-Iranian's] trade or marketing position at any time or place*", and Anglo-Iranian agreed not to use Kuwait oil so as "*to upset or injure Gulf's trade or marketing position at any time or place.*" [Emphasis supplied.] This restriction was in effect at least until *1951.*

In 1947 Shell agreed to purchase Kuwait oil on a long term basis from Gulf, one purpose being that of "rationalizing the Middle Eastern Position *in the avoidance of wasteful refining, transportation and marketing*", while Gulf agreed to sell for the purpose of securing "a steady outlet for its production through established market outlets without capital expenditure and delay involved in creating its own marketing outlets and the disturbing influence of trying as a newcomer to obtain a footing in the various markets." Restrictive provisions were included in a draft of the contract to operate reciprocally by imposing penalties upon both Gulf and Shell, should either encroach upon established marketing positions of the other through use of Kuwait crude or its products. The base year for determining marketing positions was to have been 1938, which was justified as the last year of normal operations in the Eastern Hemisphere market. Thus 1938 figures were to be projected forward to establish 1946 marketing positions, so that thereafter encroachments by one on the marketing position of the other could be determined. In discussing a draft of this provision, a Gulf official in 1947 suggested, "I am inclined to urge that *the 'as is' position* at December 31, 1946 be on file with both parties as a basis for later determining normal increase in that position as at December 31, 1946." In the final contract in 1947 the reciprocal feature was not included but Gulf was effectively restricted as to increasing its market position at the expense of Shell in areas where Shell had an established marketing position. Hence, not only did this restrictive provision implement

"As Is", it was specifically intended to do so, *postwar*. (The further carrying out of the restrictive provision referred to above was enjoined by the Final Judgment against Gulf).

(*b*) *Jersey*

Jersey agreed in 1947 to purchase Iranian or Kuwait oil from Anglo-Iranian for a period of 20 years. It was Jersey's intention "to use the oil receivable . . . in supplying buyers' business in Europe . . . North Africa . . . and West Africa", referred to as the "reference area", and it was agreed that if Jersey lost part or all of any such markets, the amount to be purchased would be proportionately reduced.

(*c*) *Socony*

In the same year Socony also agreed to purchase Iranian and Kuwait oil from Anglo-Iranian for a period of 20 years. In this agreement it was Socony's stated intention to use the oil "in supplying Buyers business" in the same "reference area" as Jersey's but with the addition of "the countries bordering on the Eastern Mediterranean." Here also the amount to be purchased was to be reduced if events limited "the quantity of oil which Buyer is able to utilize effectively for the purpose of the Reference Area." Both the Socony and Jersey 1947 contracts were executed on the same day and were intended to be identical "except for modifications required" to cover Socony's situation, such as the addition to the "reference area."

Socony made a similar 20-year purchase contract with Anglo-Iranian in 1948, with the United States as the intended market. This contract also contained a provision reducing the quantity to be purchased if events should limit the "quantity of oil which Buyer is able to utilize for importation into the U. S. A.". In addition, Socony and Anglo-Iranian executed an "Interim Contract" which acted as a substitute for the 20 year contracts during the period 1948–1952. This agreement required Socony to import only into the United States. Exceptions were made, but only with Anglo-Iranian approval. One exception, made in 1948, permitted Socony to divert oil to Europe, but it was "understood that deliveries to Europe would be restricted to Germany, France or Italy." This type of market restriction implemented the market allocation purpose as "As Is" by further protecting Anglo-Iranian's position in markets *outside* the "reference areas", while assuring Jersey and Socony of sufficient oil to hold their positions in the markets *within* the "reference areas."

Socony's answer admits that its contract with Anglo-Iranian was, "For practical purposes . . . as if Socony had secured *participation* for a long period of years in an already established production of crude." The same can be said of Jersey's contract.

3. Venezuela

The Venezuelan "Ratio Agreement" of 1937 expressly related the crude production of each party, Gulf, Jersey and Shell, to their market requirements, providing that one of the purposes of the agreement was to avoid "upsetting orderly development or proper marketing of their products", taking into consideration the "future market requirements for Venezuelan oil." Under the agreement Jersey was given the sole right to determine whether "marketing and other contemplated conditions" permitted increased production by *any* of the partners.

G. EFFECT ON UNITED STATES IMPORTS AND EXPORTS

It is almost axiomatic that the market for petroleum and its products is global in nature. Petroleum represents the most important single commodity in international trade in terms of dollar volume. In the Suez crisis supplies from the United States and the Western Hemisphere were used to make up for shortages in Europe caused by the interruption of Middle East supply. There was a similar rearrangement of supply when Iranian oil was cut off. As an official of Texaco has said: ". . . almost any action taken to make up the shortage of supply in the Eastern Hemisphere would automatically affect the Western Hemisphere, both as to imports and exports". The United States, the world's largest producer and, at the same time, the world's largest consumer, is, of course, directly affected by arrangements covering the huge foreign crude supply. As a significant example, Aramco, in a published report within the past year, indicated that its crude oil reserves were larger than reserves in the entire United States.

In addition to the conspiracy and clear intent to divide up and stabilize foreign markets, the parties have continuously shown an intent to jointly regulate the foreign supply of crude and products in world trade including that part of the supply going to the United States. The summary herein shows the tailoring of foreign supply to market requirements with coordination committees being set up, and long term, world-wide pooling of supplies being agreed upon for this purpose. There was also concerted action to keep any outside oil off the market, and the coordinated use of joint production companies to accomplish the stabilization of foreign markets. Dividing up foreign supply among foreign markets means a joint control also of the amount left to go to the United States. There are many examples in documents which will be introduced into evidence of using imports to the United States as a balance of adjustment for foreign markets and in some cases it was expressly stated, as in the Anglo Iranian-Socony long term supply contract, that certain oil could *only* go to the United States.

The concerted use by defendants and co-conspirators of an artificial basing point system for low cost foreign crude oil and products based on U.S. Gulf prices has kept the American consumer from benefiting from low cost imported foreign oil. At the same time American refiners, not having access to this oil except at high prices, have been put at a disadvantage to defendants in the United States market.

In addition, American exporters and potential exporters of products have been placed at a disadvantage in competing with products refined abroad, mainly in joint refineries, by defendants and conspirators and marketed in cartel arrangements. The Court in *United States* v. *United States Alkali Export Association*, 86 F. Supp. 59 (S.D.N.Y. 1949), was greatly concerned about such a disadvantage to independent American exporters and potential exporters arising from cartel agreements abroad by dominant American producers, pointing out that Congress had:

> * * * strong solicitude for those in this country who would be forced to compete with such [Webb-Pomerene] associations abroad would be entirely frustrated if such cartel patterns as were established here were permitted under the [Webb-Pomerene] Act. For as long as one rival of an export association sought to

vend his wares in foreign territory, international agreements of the kind here involved could do naught but restrain his trade.

See also *United States* v. *Minnesota Mining and Mfg. Co.* 92 F. Supp. 947 (D. Mass. 1950).

VI. Conclusion

The Government in this case contends that the "As Is" arrangements of prewar days, providing that the parties would cooperate and would not compete with each other, continued up to at least the date of the complaint herein and that the present defendants, Socony, Texaco and Socal, have participated in such arrangements. These world-wide agreements provided for allocation of foreign markets, regulation of local and world prices and monopolization of foreign oil supply and markets, directly affecting United States commerce.

The allocation of foreign markets, which flourished in prewar days, was continued to the extent possible during the war period and was reactivated in the postwar period in cartel arrangements in various countries of the world. By concertedly adhering to an artificial pricing system for foreign oil based upon high cost and high priced United States oil, the participants have kept the price of foreign oil at a proportionately high figure and have prevented crude oil imports from coming into the United States except at high United States prices. The participants, throughout the period of the conspiracy, have attempted to forestall outside competition and have attempted to monopolize, and have monopolized, foreign markets, foreign crude supplies and imports into the United States. Potential independent American exporters have not been able to meet the combination of defendants and co-conspirators in foreign cartel arrangements.

The Government emphasizes its view of the *per se* illegality of the giant foreign joint marketing companies, StanVac and Caltex, whereby in each case, in the context of the "As Is" arrangements, two American companies of the seven dominant integrated international oil companies agreed not to compete, but to cooperate, in marketing oil in large areas of the world.

The Final Judgments entered herein against two defendants will, in our opinion, go far to correct competitive conditions in United States foreign trade in petroleum and its products. Those judgments, however, only cover two of the original five defendants and the Government believes that it is very necessary to have relief against the remaining defendants.

Respectfully submitted.

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